DOCUMENT RESUME

ED 155 845 EC 110 611

TITLE Education for All Handicapped Children Act. Hearings Before the Subcommittee on Select Education of the Committee on Education and Labor, House of Representatives, 95th Congress, 1st Session, September 26-27, 1977.
INSTITUTION Congress of the U.S., Washington, D.C. House.
PUB DATE 78
NOTE 186p.

EDRS PRICE MF-$0.83 Plus Postage. HC Not Available from EDRS.
DESCRIPTORS Agencies; Elementary Secondary Education; *Federal Legislation; *Handicapped Children; *Hearings; Organizations (Groups)
IDENTIFIERS *Education for All Handicapped Children Act

ABSTRACT

Presented are testimony and written statements from the September, 1977 Hearings before the House Subcommittee on Select Education regarding P.L. 94-142, the Education for All Handicapped Children Act. Included are testimony and statements from individuals representing such agencies as the U.S. Office of Education (E. Boyer and E. Martin, Jr.), Council of Chief State School Officers (F. Brouillet), National Associaton for Retarded Citizens (D. Everitt), and the American Coalition for Citizens with Disabilities (F. Bowe and J. Jacobi). Appended are miscellaneous articles on P.L. 94-142 and statements from such organizations as the National Education Association and the National Society for Autistic Children. (CL)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

ED155845

EDUCATION FOR ALL HANDICAPPED CHILDREN ACT

EC

U.S. DEPARTMENT OF HEALTH, EDUCATION & WELFARE
NATIONAL INSTITUTE OF EDUCATION

THIS DOCUMENT HAS BEEN REPRODUCED EXACTLY AS RECEIVED FROM THE PERSON OR ORGANIZATION ORIGINATING IT. POINTS OF VIEW OR OPINIONS STATED DO NOT NECESSARILY REPRESENT OFFICIAL NATIONAL INSTITUTE OF EDUCATION POSITION OR POLICY

HEARINGS

BEFORE THE

SUBCOMMITTEE ON SELECT EDUCATION

OF THE

COMMITTEE ON EDUCATION AND LABOR

HOUSE OF REPRESENTATIVES

NINETY-FIFTH CONGRESS

FIRST SESSION

HEARINGS HELD IN WASHINGTON, D.C., ON
SEPTEMBER 26, AND 27, 1977

Printed for the use of the Committee on Education and Labor
CARL D. PERKINS, *Chairman*

EC110611

U.S. GOVERNMENT PRINTING OFFICE
98-811 O WASHINGTON : 1978

COMMITTEE ON EDUCATION AND LABOR

CARL D. PERKINS, Kentucky, *Chairman*

FRANK THOMPSON, Jr., New Jersey
JOHN H. DENT, Pennsylvania
JOHN BRADEMAS, Indiana
AUGUSTUS F. HAWKINS, California
WILLIAM D. FORD, Michigan
PHILLIP BURTON, California
JOSEPH M. GAYDOS, Pennsylvania
WILLIAM "BILL" CLAY, Missouri
MARIO BIAGGI, New York
IKE ANDREWS, North Carolina
MICHAEL T. BLOUIN, Iowa
ROBERT J. CORNELL, Wisconsin
PAUL SIMON, Illinois
EDWARD P. BEARD, Rhode Island
LEO C. ZEFERETTI, New York
GEORGE MILLER, California
RONALD M. MOTTL, Ohio
MICHAEL O. MYERS, Pennsylvania
AUSTIN J. MURPHY, Pennsylvania
JOSEPH A. LE FANTE, New Jersey
TED WEISS, New York
CEC HEFTEL, Hawaii
BALTASAR CORRADA, Puerto Rico
DALE E. KILDEE, Michigan

ALBERT H. QUIE, Minnesota
JOHN M. ASHBROOK, Ohio
JOHN N. ERLENBORN, Illinois
RONALD A. SARASIN, Connecticut
JOHN BUCHANAN, Alabama
JAMES M. JEFFORDS, Vermont
LARRY PRESSLER, South Dakota
WILLIAM F. GOODLING, Pennsylvania
BUD SHUSTER, Pennsylvania
SHIRLEY N. PETTIS, California
CARL D. PURSELL, Michigan
MICKEY EDWARDS, Oklahoma

SUBCOMMITTEE ON SELECT EDUCATION

JOHN BRADEMAS, Indiana, *Chairman*

EDWARD P. BEARD, Rhode Island
GEORGE MILLER, California
DALE E. KILDEE, Michigan
CEC HEFTEL, Hawaii
AUGUSTUS F. HAWKINS, California
MARIO BIAGGI, New York
CARL D. PERKINS, Kentucky, *Ex Officio*

JAMES M. JEFFORDS, Vermont
LARRY PRESSLER, South Dakota
ALBERT H. QUIE, Minnesota, *Ex Officio*

CONTENTS

Page

Hearings held in Washington, D.C.:
September 26, 1977 1
September 27, 1977 95
Statement of—
Benton, Robert D., State superintendent of public instruction, State of Iowa, and National Governors Association 23
Berman, Hon. Arthur L., State senator, 11th District, Illinois; chairman, Senate Elementary and Secondary Education Committee, and, chairman, Illinois School Problems Commission 145
Bloom, Hon. Elaine, chairperson, Federal-State Appropriations Committee, House of Representatives, State of Florida 49
Boyer, Ernest, Commissioner, Office of Education; accompanied by Edwin W. Martin, Jr., Deputy Commissioner, Bureau of Education for the Handicapped, Department of Health, Education, and Welfare 96
Britten, Betsy, director, Southwestern Ohio Coalition Parent Information Center; accompanied by Florence Tait, vice president, Southwestern Ohio Coalition for Handicapped Children, Cincinnati, Ohio 120
Brouillet, Frank, superintendent of public instruction, State of Washington, and chairman, Council of Chief State School Officers 17
Brown, William, director, Handicapped Project for the National Association of State Boards of Education (NASBE) 30
Everitt, Dee, member of the Governmental Affairs Committee, National Association for Retarded Citizens 89
Flintrop, Richard, chairman, Education Committee, Wisconsin State Assembly 2
Hill, Warren G., executive director, Education Commission of the States 12
Huber, John, Project Director, Task Force on Education for the Handicapped, South Bend, Ind 116
Iadarola, Rosalie, parent, Washington, D.C 122
Jacobi, Jan, American Coalition for Citizens with Disabilities; accompanied by Reese Robrahn, director, Research and Governmental Affairs, American Council for the Blind, Washington, D.C 75
McKinley, Donald, chief deputy superintendent, California State Department of Education; accompanied by David Campbell, deputy superintendent for programs 138
Sauerland, Paul, president, Voice for the Handicapped, Inc., Hicksville, N.Y 127
Tait, Florence, vice president, Southwestern Ohio Coalition for Handicapped Children, Cincinnati, Ohio 129
Weintraub, Frederick, director, Government Affairs Council for Exceptional Children, Reston, Va.; Frank Bowe, director, American Coalition for Citizens with Disabilities; accompanied by, Reese Robrahn, director, Research and Governmental Affairs, American Council of the Blind; Daniel Yohalem, attorney, Children's Defense Fund; and Dee Everitt, members, Governmental Affairs Committee, National Association for Retarded Citizens, Washington, D.C., a panel 60
Yohalem, Daniel, attorney, Children's Defense Fund, Washington, D.C 78
Prepared statements, letters, supplemental materials, et cetera—
Benton, Robert D., State superintendent of public instruction, Iowa Department of Public Instruction, Grimes State Office Building, Des Moines, Iowa, statement of 25
Berman, Arthur L., State Senator, chairman, Illinois Senate Elementary and Secondary Education Committee, Illinois Schools Problems Commission, statement by 147

Prepared statements, letters, supplemental materials, et cetera—Continued Page

Bloom, Elaine, chairperson, Federal-State Appropriations Committee, House of Representatives, State of Florida, "Florida Constitutional and Statutory Conflicts with the Education for all Handicapped Children Act (Public Law 94-142) 51
Boyer, Ernest L., U.S. Commissioner of Education, Department of Health, Education, and Welfare, statement by 98
Brouillet, Dr. Frank B., chairman, Committee on Legislation, Council of Chief State School Officers and Superintendent of Public Instruction, State of Washington, statement of 19
Brown, William D., National Association of State Boards of Education, statement by 33
Everitt, Dee, member, The National Association for Retarded Citizens, Governmental Affairs Committee, prepared statement of 91
Flintrop, Richard A., chairman, Education Committee, Wisconsin State Assembly, testimony on 8
Hill, Dr. Warren G., executive director, Education Commission of the States, testimony by 14
Huber, John, project director, Task Force on Education for the Handicapped, South Bend, Ind., statement of 117
Iadarola, Rosalie, parent, Washington, D.C.:
"A Familiar Story," article from the Washington Post, August 12, 1977 125
"Lawyers Charge City Is Lax in Providing Special Education," article from the Washington Post, August 4, 1977 126
Martin, Edwin W., deputy commissioner, Bureau of Education for the Handicapped, letter to Chairman Brademas enclosing requested information, dated November 3, 1977 111
McKinley, Donald, chief deputy superintendent of public instruction, State of California, statement of 142
Tait, Florence, vice president, Southwestern Ohio Coalition for Handicapped Children, testimony of 130
Weintraub, Frederick J., assistant executive director, governmental relations, The Council for Exceptional Children, Reston, Va., statement presented by 67
Yohalem, Daniel, attorney, The Children's Defense Fund, testimony of 85

APPENDIX

"An Early Years Portfolio on Public Law 94-142," miscellaneous articles 164
Breunig, H. Latham, president, Alexander Graham Bell Association for the Deaf, Inc., Washington, D.C., letter to Chairman Brademas, dated October 8, 1977 161
National Easter Seal Society for Crippled Children and Adults, statement of ... 155
National Education Association, Washington, D.C., statement of 157
National Society for Autistic Children, Albany, N.Y., statement of 160

EDUCATION FOR ALL HANDICAPPED CHILDREN ACT

MONDAY, SEPTEMBER 26, 1977

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON SELECT EDUCATION OF THE
COMMITTEE ON EDUCATION AND LABOR,
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to notice, in room 2175, Rayburn House Office Building, Hon. John Brademas (chairman of the subcommittee) presiding.

Members present: Representatives Brademas, Miller, Kildee, Quie, Jeffords, and Pressler.

Staff present: Jack G. Duncan, counsel; Thomas Wolanin, deputy staff director; Joan Godley, executive secretary; and Moya Benoit, secretary.

Mr. BRADEMAS. The Subcommittee on Select Education will come to order for the purpose of oversight hearings on Public Law 94-142, the Education for All Handicapped Children Act.

This landmark education measure, which became law during the 94th Congress, provides funds to States and local schools to help them meet the burden of educating handicapped children. We all know that it costs far more to educate a handicapped child than it does a child without a disability and we know, too, that only about 40 percent of the 8 million handicapped children in this country are now receiving the special education they should be getting. The Education for All Handicapped Children Act can provide an educational opportunity for millions of physically and mentally disabled youngsters.

Public Law 94-142 was passed by Congress after several years of consideration and effort. The regulations implementing this law will become effective on October 1, 1977, and the law requires that every State must assure a free appropriate public education for all handicapped children between the ages of 3 and 18 by September 1, 1978. Now that the time for implementation of the law is here, we want to examine the issues raised since the enactment 2 years ago.

This morning we shall hear testimony on the legislation from representatives of State government, State boards of education, and organizations representing handicapped persons.

As our first group of witnesses, we shall have a panel. The Chair wishes first to call on our distinguished colleague from Wisconsin, Hon. William Steiger, to present a member of this panel who comes from his own State.

Mr. Steiger, we are pleased to have you with us this morning.

HON. WILLIAM A. STEIGER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WISCONSIN

Mr. STEIGER. Thank you very much, Mr. Chairman. It is a great pleasure for me as well as an honor to have the opportunity to present to this subcommittee, Dick Flintrop. Dick represents the city of Oshkosh in my old assembly district. It is that district that Dick successfully, despite my opposition, won in 1972, 1974, and 1976. He is now the chairman of the assembly education committee.

Wisconsin, as you know, Mr. Chairman, has had a long history of involvement in special education. Our chapter 89 is at least as extensive if not even more extensive than that which you are now looking at.

Because Dick Flintrop has been very deeply involved in this whole issue as the chairman of the education committee of our State assembly and representing the National Conference of State Legislatures, it is a very real honor for me to present him to you. I hope you will listen with care to what he has to say and the impact that this law which we have passed has had on what he has to do and on what Wisconsin has had to do.

Mr. BRADEMAS. Thank you very much, Mr. Steiger.

Would you like to go ahead, Mr. Flintrop?

STATEMENT OF HON. RICHARD FLINTROP, CHAIRMAN, EDUCATION COMMITTEE, WISCONSIN STATE ASSEMBLY; NATIONAL CONFERENCE ON STATE LEGISLATURES

Mr. FLINTROP. Mr. Chairman, I am Richard Flintrop, chairman of the assembly education committee in the State of Wisconsin. I am appearing before your committee as a spokesperson for the education committee of the National Conference of State Legislatures and to share our concerns about Federal efforts to assure a free and appropriate public education for all handicapped children, particularly through Public Law 94-142.

I make a side observation, Mr. Chairman, so that the credibility of my testimony is not questioned in the near future, Wisconsin is probably very shortly going to have imposed on it by the Federal courts a special master of special education and I would suggest for your reference that that action is not due to the lack of willingness on the part of the State or school Districts to comply with both the State and Federal laws but instead because of the lack of enthusiasm with which the State superintendent of schools has enforced that law.

In my testimony here today, I would like to focus on two areas primarily. First I would like to review a number of general problems which we in the States are encountering with respect to Public Law 94-142, and, second, where appropriate in this review, I would like to indicate a few of the specific problems which we are facing in my own State of Wisconsin.

Mr. Chairman, the objectives of Public Law 94-142 are laudible; the problem as we see it is overcoming the obstacles that stand between where we the States are and where we would like to be in successfully implementing this law. These obstacles are program

costs, Federal commitment, accurate child counts, inservice training, and paperwork requirements.

Program costs. No one knows exactly how much it will cost to assure every handicapped child in this Nation a proper education. Estimates vary widely. State educational agencies told the U.S. Bureau of Education for the Handicapped over a year ago that the price tag nationally would amount to about $5 billion over then current outlays. The Congressional Budget Office has estimated that the cost over present outlays could range from a low of about $1.5 billion to a high of as much as $8 billion. The National Conference of State Legislatures believes that the need for additional resources is not less than $2.4 billion. The problem which I would like to stress, however, is not so much the amount of money that is needed nationally, but the fact that the number of dollars required varies dramatically from State to State.

The funding needs of many States are extreme. In 1976, for example, nearly one out of three State educational agencies told the U.S. Bureau of Education for the Handicapped that they could not assure all handicapped children an appropriate education unless then current spending levels were increased by at least 200 percent and in some cases by as much as 500 percent. Other States, fortunately, are relatively better off due either to a traditional commitment to the education of handicapped youngsters or to a start in the early 1970's toward achieving full educational services to all of their school children. Nonetheless, these relatively advantaged States will need to increase their revenues anywhere from about 25 to 75 percent.

We in Wisconsin are extremely fortunate. The requirements for special education in Wisconsin can be met without inordinate difficulty. This school year, the first year of our biennium, we will be committing more than $78 million in direct State aid for special education while in the 1978–79 school year, more than $93 million has been budgeted. The latter figure represents an increase of more than 215 percent in just 5 years. Aid to special education is the most rapidly growing appropriation in Wisconsin State government.

The point I want to make, Mr. Chairman is this. The funding arrangements of Public Law 94–142 deal unfairly with States at the two extremes in providing special education services. Given the current phasein of Federal payments, States which must make a massive new commitment must do so initially with relatively few Federal resources to help meet program costs. On the other hand, States such as my own have made such a substantial commitment heretofore, that they will not be able to maximize the use of Federal dollars to help meet those costs. I should suggest there are some problems with the Federal regs being too stiff. In Wisconsin we are unable to move the priority two in some of the districts because of the lack of compliance of less than 10 percent of our districts.

Another major obstacle to successfully implementing Public Law 94–142 is, I fear, a lack of commitment or will on the part of the Federal Government to carry out the law forthrightly and to amend it promptly where it proves flawed. The experience of the ESEA title I program and other Federal education legislation sug-

gests that the history of Public Law 94-142 may well be one of muddling through, or attempting to avoid conflicts between promise and reality rather than addressing them straight away. This, however, would be nothing more than a disservice to the children Public Law 94-142 purports to protect.

Frankly, Mr. Chairman, we are also fearful that the Federal Government may not follow through with the appropriations to fund Public Law 94-142 at its authorized levels. While States that accept Public Law 94-142 funding must bind themselves legally to educate all handicapped children according to Federal rules, the Federal Government is under absolutely no legal obligation to appropriate 1 cent in return. This is unfair and it provides no political incentive for the Federal Government to fund Public Law 94-142 to the maximum extent authorized. Furthermore, the fact that last year's child count figures were lower than anticipated also makes this an attractive option. I am further aware that the point had been made repeatedly in the last several months that there is no need for the Federal Government to increase its financial commitment to the education of handicapped children because States are liable to meet the basic requirements of Public Law 94-142 under their own State laws and under section 504 of the Rehabilitation Act. This proposition, from a strictly legal standpoint, is essentially correct. But it begs a basic issue: simply stated, many States and local educational agencies lack the economic wherewithal to do the job by themselves within a short period of time. While a handful of States have very handsome budgetary surpluses, they are not the norm.

To be sure, we are well aware that the Federal Government has its budgetary problems, too. But just as special education mandates have compelled us to reassess our priorities, we hope that they will encourage the Congress to reassess its priorities. If we are unable collectively to honor our promises to handicapped people, we deserve nothing more than the cynicism and lack of public support that plagues Government at every level.

A third principal obstacle continues to be determining the number of aid-eligible children under Public Law 94-142. The amount of assistance provided under Public Law 94-142 in any fiscal year is contingent on the size of the Federal appropriation, the national average per pupil expenditure, and the number of special education pupils who are aid-eligible.

The population of aid-eligible pupils as determined by averaging the number of handicapped children within certain age ranges receiving special education on October 1 and February 1 in the year preceding the one in which aid is actually paid. While it was expected that this counting procedure would generate an aid-eligible population for fiscal 1978 of about 4.6 million handicapped pupils, the actual count appears closer to 3.6 million. This shortfall can be attributed to a variety of problems. One is the purely transitional difficulty of implementing a new census mechanism; another is the temporary limit, and I hope temporary limit, on the number of aid-eligible children with learning disabilities. There are two other problems, however, which are more basic. These problems have been raised before in NCSL testimony, but I feel the issue is sufficiently critical that they be stated anew.

First, the current census procedure requires that special education students be counted on an unduplicated basis; that is, each child may be counted only one, no matter the number of his or her handicapped conditions. As a result, the current census makes absolutely no allowance for interstate differences in the cost of quality special education services. Indeed, it not only fails to provide an incentive for improving special education services but also unfairly penalizes States which have opted to provide high quality services on their own initiative at their own expense.

A second serious weakness in the current census method is its prohibition against counting special education students on a cumulative basis. Children may be considered eligible for Federal aid only if they received special education on either October 1 or February 1. Children who received services at any other point in the year are excluded. Accordingly, the current counting system imposes a harsh penalty against all States which operate large speech therapy programs or other special education services such as resource rooms which are not and need not be operated on a daily basis.

In Wisconsin, the consequences of these procedures are quite significant. Wisconsin has reported a little more than 54,000 aid-eligible individual handcapped children as a result of its 1976–77 child count. However, our State department of public instruction reports over 87,000 children served on a duplicated head count basis. Thus the Public Law 94–142 census procedures do not recognize that there are over 30,000 youngsters in Wisconsin who, because of multiple or severe handicaps, are receiving services in one or more special education programs. These youngsters are clearly the most costly to educate, yet the State is unable to receive any additional Federal assistance for these children.

As a result of these procedures, given our reported count of just over 54,000, we in Wisconsin, will not even be able to qualify for our full Federal Public Law 94–142 entitlement this year. We will receive $3.8 million of our entitlement of $4.3 million. Even nationally, it will be impossible for the States to reserve 100 percent of the $315 million appropriation for 1978 as the number of eligible special education pupils—3.3 to 3.6 million—multiplied by 5 percent of the national average per pupil expenditure—$1,400—yields an aid distribution of only $260 million.

A fourth key obstacle to successful implementation of Public Law 94–142 and which may parallel State special education laws is inadequately prepared school staff. The law of the land requires that all handicapped children be educated in regular classroom programs wherever appropriate, yet only a very small number of our regular classroom teachers have had even the most cursory preparation in special education. The law of the land requires that all handicapped children must be carefully diagnosed and evaluated before being placed in an educational program, but many school districts and some States do not have an adequate supply of the personnel that are required to do the job. Much like physicians, highly skilled special education experts tend to gravitate to surburban areas and to shy away from remote rural communities and poor inner cities.

In Wisconsin, because of the commitment on the part of our State university system, we seem to have an adequate supply of special education staff and supporting personnel. We are also fortunate in that our State department of public instruction has begun an extensive program of inservice training for regular education teachers who will be having youngsters with special educaticnal needs mainstreamed through their classes. At present, nearly 9,000 teachers have had some form of inservice training, but the need for additional first time training and followup remains very strong.

Finally, I would like to comment on the last significant obstacle, namely the inordinate amounts of forms, certifications, and assurances which must be filed for this act. Mr. Chairman, I know that you have heard cries about Federal redtape many times, but I think the problems which Public Law 94-142 raises in this respect are unique and worth your careful consideration. Unlike almost all other major pieces of Federal education legislation, Public Law 94-142 was enacted substantially after most States had developed their own legislation in the same area. The result has been needless legal and administrative overlap, duplication and conflict. Records for the Federal program must be kept one way; records for State programs must be kept another. Federal due process requirements work one way; State requirements often work in another. This simply does not make sense. In other words, there is far too little flexibility on the part of the Federal Government to take into account adequately delivered programs at the State level.

It not only diverts for too much staff time and resources from the task of actually serving children, but also creates a legal crazy quilt which is an open invitation to little more than paper compliance.

We have prided ourselves in Wisconsin in having a comprehensive special education act which we feel much of Public Law 94-142 was patterned after. Because our law is fully as comprehensive, and in some cases more so, than the Federal statute, it would seem appropriate that the Federal Government accept as evidence of compliance with Public Law 94-142 those assurances which have been submitted for our State law. I think that the Federal Government should properly—and can safely—defer the State laws and practices in a number of cases, thereby relieving much of the paperwork requirements.

Mr. Chairman, I believe that the Congress can play a constructive role in overcoming these obstacles by giving full consideration to the following proposals:

One: (a) Eliminate the phasein of Federal contributions—from 5 percent for fiscal year 1977 to 40 percent for fiscal year 1982—and to authorize 40 percent of the national average per pupil expenditures multiplied by the child count beginning as soon as possible. Since the law requires immediate provision of services, there is no educationally justifiable rationale for a phasein of Federal support.

(b) Or as an alternative to (a), amend Public Law 94-142 to hold recipients harmless from the requirements of the act which transcend the mandates contained in section 504 of the Rehabilitation Act on May 4, 1977, until such time as the Federal contribution under Public Law 94-142 is equal to 40 percent of the national average per pupil expenditure mulitplied by the number of eligible

children. This would assure every handicapped child his or her basic civil rights but would permit State and local educational agencies the time necessary to meet the requirements of Public Law 94-142 which are over and above those in section 504.

Two: Assure that the Federal Government act to finance Public Law 94-142 up to the authorized amounts. As the NCSL has indicated before the statute could be amended to specify that approval of a State plan by the U.S. Commissioner of Education for Federal participation would constitute a contracted obligation by the Federal Government to pay to the State the percentage of cost authorized by statute.

Three: Amend the present census method to provide for a duplicated and cumulative count of all pupils receiving special education. This census method retains the administrative simplicity of the present procedure, provides an incentive for high quality services and will give at least partial recognition to special education programs which do not operate on a daily basis.

Four: (a) Amend existing Federal legislation for special education manpower development to authorize sufficient funding to support the full tuition and living costs incurred annually by up to 20,000 individuals enrolled in degree-granting programs for categories of certified special education personnel to be designated by the U.S. Bureau of Education for the Handicapped, providing that such individuals consent to accept positions of employment for not less than 5 years in local educational agencies with State educational agency certified shortages of such personnel. Beneficiaries of the program who fail to accept positions in local educational agencies facing shortages of critical special education manpower would be liable to reimburse all Federal benefits within 2 years after the completion of their academic program.

(b) Amend existing Federal legislation for special education manpower development to authorize sufficient funding to support an entitlement program for local educational agencies not to exceed 4 years duration which would underwrite 40 percent of the cost of providing a State educational agency approved program of inservice training to regular classroom teachers with responsibilities for educating handicapped children, with no local educational agency eligible to receive more than $50 per teacher per year, really a very insignificant amount but one that would go a long way toward solving the gap between the need and the quality of service available in the classroom.

Five: (a) Amend Public Law 94-142 to permit any State which is in compliance with the elementary and secondary education regulations for section 504 of the Rehabilitation Act of 1973 to receive and administer its share of funds appropriated for Public Law 94-142 in accordance with State law and regulations, provided that local educational agencies receive 75 percent of all such funds in accordance with the formula that will go in effect during fiscal 1979.

(b) Require the U.S. Office of Civil Rights to issue an annual report to the Congress which specifies those States that are not in substantial compliance with the elementary and secondary education regulations for section 504 of the Rehabilitation Act of 1973. However, any such determination of noncompliance by the OCR

should be consistent with the policies and guidelines of the Bureau of Education for the Handicapped.

An additional comment. I would like to plead with you that you aggressively move to rectify the shortcomings both of the law and the administrative rules. Frankly, Mr. Chairman, I believe you have maximized your political mileage and the Congress has maximized its political mileage in the special education area. The only incentive remaining now is the development of sound educational policy. As a member of a legislative body, I know that all too often that criteria, that priority, takes a second seat to the politics of education. I would hope though, that Congress will move behind this hearing, the hearings you are holding on 94-142, on the point of amending the Federal regulations and, if necessary, amending the statutes themselves and hopefully to readdress your own priorities in such a way that more money can be put on the track to meet the needs of the children with special educational needs well before the date within the existing law.

I very much appreciate the opportunity to be here. I hope that the actions of your subcommittee prove our efforts to be worthwhile.

[The prepared statement of Richard A. Flintrop follows:]

TESTIMONY ON THE EDUCATION FOR ALL HANDICAPPED CHILDREN ACT OF 1975 BY REPRESENTATIVE RICHARD A. FLINTROP, CHAIRMAN, EDUCATION COMMITTEE, WISCONSIN STATE ASSEMBLY AND THE NATIONAL CONFERENCE OF STATE LEGISLATURES

Mr. Chairman, I am Richard Flintrop, Chairman of the Assembly Education Committee in the State of Wisconsin. I am appearing before your Committee as a spokesperson for the Education Committee of the National Conference of State Legislatures and to share our concerns about federal efforts to assure a free and appropriate public education for all handicapped children, particularly through Public Law 94-142. In my testimony here today, I would like to focus on two areas primarily. First I would like to review a number of general problems which we in the states are encountering with respect to P.L. 94-142, and, secondly, where appropriate in this review, I would like to indicate a few of the specific problems which we are facing in my own state of Wisconsin.

Mr. Chairman, the objectives of Public Law 94-142 are laudable; the problem as we see it is overcoming the obstacles that stand between where we the states are and where we would like to be in successfully implementing this law. These obstacles are program costs, federal commitment, accurate child counts, in-service training, and paperwork requirements.

Program Costs. No one knows exactly how much it will cost to assure every handicapped child in this nation a proper education. Estimates vary widely. State educational agencies told the U.S. Bureau of Education for the Handicapped over a year ago that the price tag nationally would amount to about $5 billion over then-current outlays. The Congressional Budget Office has estimated that the cost over present outlays could range from a low of about $1.5 billion to a high of as much as $8 billion. The National Conference of State Legislatures believes that the need for additional resources is not less than $2.4 billion. The problem which I would like to stress, however, is not so much the amount of money that is needed nationally, but the fact that the number of dollars required varies so dramatically from state to state.

The funding needs of many states are extreme. In 1976, for example, nearly 1 out of 3 state educational agencies told the U.S. Bureau of Education for the Handicapped that they could not assure all handicapped children an appropriate education unless then-current spending levels were increased by at least 200 percent and in some cases by as much as 500 percent. Other states, fortunately, are relatively better off due either to a traditional commitment to the education of handicapped youngsters or to a start in the early 1970's toward achieving full educational services to all of their school children. Nonetheless, these relatively advantaged states will need to increase their revenues anywhere from about 25 to 75 percent.

We in Wisconsin are extremely fortunate. The requirements for special education in Wisconsin can be met without inordinate difficulty. This school year, the first year of our biennium we will be committing more than $78 million in direct state aid for special education while in the 1978-79 school year, more than $93 million has been budgeted. The latter figure represents an increase of more than 215 percent in just five years. Aid to special education is the most rapidly growing appropriation in Wisconsin state government.

The point I want to make, Mr. Chairman, is this. The funding arrangements of P.L. 94-142 deal unfairly with states at the two extremes in providing special education services. Given the current phase-in of federal payments, states which must make a massive new commitment must do so initially with relatively few federal resources to help meet program costs. On the other hand, states such as my own have made such a substantial commitment heretofore, that they will not be able to maximize the use of federal dollars to help meet those costs.

Federal Commitment. Another major obstacle to successfully implementing Public Law 94-142 is, I fear, a lack of commitment or will on the part of the Federal Government to carry out the law forthrightly and to amend it promptly where it proves flawed. The experience of the E.S.E.A. Title I program and other Federal education legislation suggests that the history of Public Law 94-142 may well be one of muddling through, of attempting to avoid conflicts between promise and reality rather than addressing them straight away. This, however, would be nothing more than a disservice to the children P.L. 94-142 purports to protect.

Frankly, Mr. Chairman, we are also fearful that the federal government may not follow through with the appropriations to fund P.L. 94-142 at its authorized levels. While states that accept P.L. 94-142 funding must bind themselves legally to educate all handicapped children according to federal rules, the federal government is under absolutely no legal obligation to appropriate one cent in return. This is unfair and it provides no political incentive for the federal government to fund P.L. 94-142 to the maximum extent authorized. Furthermore, the fact that last year's child count figures were lower than anticipated also makes this an attractive option. I am further aware that the point has been made repeatedly in the last several months that there is no need for the federal government to increase its financial commitment to the education of handicapped children because states are liable to meet the basic requirements of P.L. 94-142 under their own state laws and under Section 504 of the Rehabilitation Act. This proposition, from a strictly legal standpoint, is essentially correct. But it begs a basic issue: simply stated, many states and local educational agencies lack the economic wherewithall to do the job by themselves within a short period of time. While a handful of states have very handsome budgetary surpluses, they are not the norm.

To be sure, we are well aware that the federal government has its budgetary problems, too. But just as special education mandates have compelled us to reassess our priorities, we hope that they will encourage the Congress to reassess its priorities. If we are unable collectively to honor our promises to handicapped people, we deserve nothing more than the cynicism and lack of public support that plagues government at every level.

Accurate Child Counts. A third principal obstacle continues to be determining the number of aid eligible children under P.L. 94-142. The amount of assistance provided under P.L. 94-142 in any fiscal year is contingent on the size of the federal appropriation, the national average per pupil expenditure, and the number of special education pupils who are aid-eligible.

The population of aid-eligible pupils is determined by averaging the number of handicapped children within certain age ranges receiving special education on October 1 and February 1 in the year preceding the one in which aid is actually paid. While it was expected that this counting procedure would generate an aid-eligible population for fiscal 1978 of about 4.6 million handicapped pupils, the actual count appears closer to 3.6 million. This shortfall can be attributed to a variety of problems. One is the purely transitional difficulty of implementing a new census mechanism, another is the temporary limit, and I hope temporary limit, on the number of aid-eligible children with learning disabilities. There are two other problems, however, which are more basic. These problems have been raised before in NCSL testimony, but I feel the issue is sufficiently critical that they be stated anew.

First, the current census procedure requires that special education students be counted on an "unduplicated" basis; that is, each child may be counted only once, no matter the number of his or her handicapping conditions. As a result, the current census makes absolutely no allowance for interstate differences in the cost of quality special education services. Indeed, it not only fails to provide an incentive for improving special education services but also unfairly penalizes states which

have opted to provide high quality services on their own initiative at their own expense.

A second serious weakness in the current census method is its prohibition against counting special education students on a "cumulative" basis. Children may be considered eligible for federal aid only if they received special education on either October 1 or February 1. Children who received services at any other point in the year are excluded. Accordingly, the current counting system imposes a harsh penalty against all states which operate large speech therapy programs or other special education services such as resource rooms which are not and need not be operated on a daily basis.

In Wisconsin, the consequences of these procedures are quite significant. Wisconsin has reported a little more than 54,000 aid-eligible individual handicapped children as a result of its 1976–77 child count. However, our State Department of Public Instruction reports over 87,000 children served on a duplicated head count basis. Thus the P.L. 94–142 census procedures do not recognize that there are over 30,000 youngsters in Wisconsin who, because of multiple or severe handicaps, are receiving services in one or more special education programs. These youngsters are clearly the most costly to educate, yet the state is unable to receive any additional federal assistance for these children.

As a result of these procedures, given our reported count of just over 54,000, we in Wisconsin, will not even be able to qualify for our full federal P.L. 94–142 entitlement this year. (We will receive $3.8 million of our entitlement of $4.3 million.) Even nationally, it will be impossible for the states to reserve 100 of the $315 million appropriation for 1978 as the number of eligible special education pupils (3.3 to 3.6 million) multiplied by 5 percent of the national average per pupil expenditure ($1,400) yields an aid distribution of only $260 million.

In-service Training. A fourth key obstacle to successful implementation of P.L. 94–142 and which may parallel state special education laws is inadequately prepared school staff. The law of the land requires that all handicapped children be educated in regular classroom programs wherever appropriate, yet only a very small number of our regular classroom teachers have had even the most cursory preparation in special education. The law of the land requires that all handicapped children must be carefully diagnosed and evaluated before being placed in an educational program, but many school districts and some states do not have an adequate supply of the personnel that are required to do the job. Much like physicians, highly skilled special education experts tend to gravitate to suburban areas and to shy away from remote rural communities and poor inner cities.

In Wisconsin because of the commitment on the part of our State University system, we seem to have an adequate supply of special education staff and supporting personnel. We are also fortunate in that our State Departmnent of Public Instruction has begun an extensive program of in-service training for regular education teachers who will be having youngsters with special educational needs mainstreamed through their classes. At present, nearly 9,000 teachers have had some form of in-service training, but the need for additional first-time training and followup remains very strong.

Paperwork Requirements. Finally, I would like to comment on the last significant obstacle, namely the inordinate amounts of forms, certifications, and assurances which must be filed for this Act. Mr. Chairman, I know that you have heard cries about federal redtape many times, but I think the problems which P.L. 94–142 raises in this respect are unique and worth your careful consideration. Unlike almost all other major pieces of federal education legislation, Public Law 94–142 was enacted substantially after most states had developed their own legislation in the same area. The result has been needless legal and administrative overlap, duplication and conflict. Records for the federal program must be kept one way; records for state programs must be kept in another. Federal due process requirements work one way; state requirements often work in another. This simply does not make sense. It not only diverts far too much staff time and resources from the task of actually serving children, but also creates a legal crazy quilt which is an open invitation to little more than paper compliance.

We have prided ourselves in Wisconsin in having a comprehensive special education act which we feel much of P.L. 94–142 was patterned after. Because our Law is fully as comprehensive (and in some cases more so) than the federal statute, it would seem appropriate that the federal government accept as evidence of compliance with P.L. 94–142 those assurances which have been submitted for our state law. I think that the federal government should properly (and can safely) defer to state laws and practices in a number of cases, thereby relieving much of the paperwork requirements.

What Should Be Done? Mr. Chairman, I believe that the Congress can play a constructive role in overcoming these obstacles by giving full consideration to the following proposals:

1. (a) Eliminate the phase-in of federal contributions (from 5 percent for fiscal year 1977 to 40 percent for fiscal year 1982), and to authorize 40 percent of the national average per pupil expenditures multiplied by the child count beginning as soon as possible. Since the law requires immediate provision of services, there is no educationally justifiable rationale for a phase-in of federal support.

(b) Or as an alternative to (a), amend P.L. 94-142 to hold recipients harmless from the requirements of the Act which transcend the mandates contained in section 504 of the Rehabilitation Act on May 4, 1977, until such time as the federal contribution under P.L. 94-142 is equal to 40 percent of the national average per pupil expenditure multiplied by the number of eligible children. This would assure every handicapped child his or her basic civil rights but would permit state and local educational agencies the time necessary to meet the requirements of P.L. 94-142 which are over and above those in Section 504.

2. Assure that the federal government act to finance Public Law 94-142 up to the authorized amounts. As the NCSL has indicated before the statute could be amended to specify that approval of a state plan by the U.S. Commissioner of Education for federal participation would constitute a contracted obligation by the federal government to pay to the state the percentage of cost authorized by the statute.

3. Amend the present census method to provide for a duplicated and cumulative count of all pupils receiving special education. This census method retains the administrative simplicity of the present procedure, provides an incentive for high quality services, and will give at least partial recognition to special education programs which do not operate on a daily basis.

4. (a) Amend existing federal legislation for special education manpower development to authorize sufficient funding to support the full tuition and living costs incurred annually by up to 20,000 individuals enrolled in degree granting programs for critical categories of certified special education personnel to be designated by the U.S. Bureau of Education for the Handicapped, providing that such individuals consent to accept positions of employment for not less than 5 years in local educational agencies with state educational agency-certified shortages of such personnel. Beneficiaries of the program who fail to accept positions in local educational agencies facing shortages of critical special education manpower would be liable to reimburse all federal benefits within two years after the completion of their academic program.

(b) Amend existing federal legislation for special education manpower development to authorize sufficient funding to support an entitlement program for local educational agencies not to exceed four years' duration which would underwrite 40 percent of the cost of providing a state educational agency approved program of in-service training to regular classroom teachers with responsibilities for educating handicapped children, with no local educational agency eligible to receive more than $50 per teacher per year.

5. (a) Amend Public Law 94-142 to permit any state which is in compliance with the elementary and secondary education regulations for Section 504 of the Rehabilitation Act of 1973 to receive and administer its share of funds appropriated for P.L. 94-142 in accordance with state law and regulations, provided that local educational agencies receive 75 percent of all such funds in accordance with the formula that will go into effect during fiscal 1979.

(b) Require the U.S. Office for Civil Rights to issue an annual report to the Congress which specifies those states that are and are not in substantial compliance with the elementary and secondary education regulations for Section 504 of the Rehabilitation Act of 1973. However, any such determination of noncompliance by the OCR should be consistant with the policies and guidelines of the Bureau of Education for the Handicapped.

I have attempted, Mr. Chairman, to outline to you and to members of this Committee some of the principal obstacles to effective implementation of Public Law 94-142. For each, I have posed some possible alternatives for your consideration. At this point, however, I would like to close my prepared remarks to answer any questions which you might have.

Mr. BRADEMAS. Thank you very much, Mr. Flintrop. I am tempted to respond that I hope you have maximized political mileage in your own State by your observations. There are members of this committee who are concerned about the education of children for your information, sir.

I will ask the next witnesses if they will try, if possible, to summarize their testimony because we have another panel and another witness; otherwise we shall have no opportunity to put questions to you.

STATEMENT OF WARREN G. HILL, EXECUTIVE DIRECTOR, EDUCATION COMMISSION OF THE STATES, ACCOMPANIED BY JOE W. (PAT) FLEMING

Mr. HILL. I am Warren Hill, executive director of the Education Commission of the States and I have filed a statement with your committee and I will observe your request, Mr. Chairman, to be as brief as possible and will be working from notes rather than the statement, if you don't mind.

Mr. BRADEMAS. Thank you.

Mr. HILL. I would also like instead of the Education Commission of the States to use the initials ECS. I will simply note that ECS is a State member organization, that it was initiated in this country to improve education of the Nation through cooperation among the States. In this particular instance, I would like to point out that we have been working very closely with other organizations that have members who have State reponsibility for education, legal responsibility, and those are the Governors, the legislators, a few State fiscal officers and State boards of education.

I would like to make four points to the committee: The first establishes the fact that the Education Commission of the States has been involved in and concerned about the education of the handicapped since its inception 11 years ago. I think many members of your committee are aware of our handicapped children project and the result of that effort are very clearly seen in the statutes of the States that have laws governing this and in 94-142 itself. We have been at it awhile.

Second point I would like to make is that this legislation, 94-142, is needed, positive and valuable Federal legislation and that ECS is in complete accord with its intent and with those who initiated it and with those who support it.

We do believe though, that it presents certain legal, technical, and financial problems of the States that require attention.

The organizations that are represented here, and who will be making their own statements did join together last February and wrote to you, Mr. Chairman, and to Senator Randolph listing our concerns about this particular legislation.

Third, we are convinced that public expectations about this act are very high and in fact becoming higher and there is belief that the promises that have been made are going to be fulfilled and out of hand. This creates some concern for us and I would like to list them very quickly. We do believe, we are convinced, that there are significant costs albeit ones that are hard to define and that those costs have been budgeted either at the State or local level uniformly in all cases or the taxes to support them identified. Again, that the dates stated will be hard to keep.

Third. That the State plans being filed either state more than they can deliver or they are being filed by individuals whose commitments are clearly reflected in the State law where they are

located. Again, State plans may fall far short of the requirements of the law and still be approved.

The Federal Government apparently believes that most of the problems regarding implementation can be resolved through time and discussion and that unfulfilled expectations will result in confrontation and litigation.

To summarize that very quickly, we believe that 94-142 is a law, not a theory, and that as soon as possible some changes that would correct it and make it even better should be made.

Now, my fourth point. Very generally the Education Commission of the States is interested in and dedicated to the improvement of State and Federal regulations and I would even say State, local and Federal regulations. All these levels of government have a legitimate interest in education. All are interested in maximum opportunity for the citizens in education and maximum return on the investment being made. I think those objectives require cooperation and coordination of effort.

Now, with specific reference to this act, we have been concerned that the questions about the implementation of the law from the States' point of view have not been receiving adequate attention. On September 13 the organizations that are meeting today with you met with Commissioner Boyer, Assistant Secretary Berry, Dr. Abramourtz of the White House Domestic Council Staff, Dr. O'Keefe, Office of Assistant Secretary for Planning and Evaluation and representatives of the Office of Civil Rights. We requested the meeting. We appreciated it was held and we believe it was extremely beneficial and helpful. I think as a result of that meeting we all understand each other better, as the next generation says, Mr. Chairman, where we are all coming from, and I think there is less concern that some of us might be bad guys because we are asking questions.

We are clearly committed in the ECS to pressing for more Federal participation in this. We are equally committed to working closely with BEH in establishing facts that might undergird any changes that are suggested in this law. Again, keeping the States informed concerning the possible legal, technical or financial problems that might surround the implementation of it, and finally, the filing with BEH those areas where technical assistance to the States and LEA's essential for sustantive implementation of the law.

Let me go back where I began to say this is needed, positive and valuable Federal legislation. We believe that its goals, however laudable, and they certainly are, are not going to be attained without the commitment of the States and the LEA's, local education agencies. We will continue to work to seek that commitment or to reinforce it. As we do that, we hope that there will be adequate recognition of what the States have accomplished, what they are attempting to do and where they see the need for different approaches on this.

We applaud the efforts of coming in trying to provide greater opportunities for the handicapped. I would like to assure you that we will work closely with you, with your staff, with USOE or with anyone else who subscribes to the goals of this legislation and we will do it gladly and wholeheartedly.

I appreciate, Mr. Chairman and members of the committee, the opportunity to make this statement.

Thank you.

[The statement of Warren G. Hill follows:]

TESTIMONY BY DR. WARREN G. HILL, EXECUTIVE DIRECTOR, EDUCATION COMMISSION OF THE STATES

Mr. Chairman and members of the Subcommittee: I am Warren G. Hill, Executive Director of the Education Commission of the States (ECS). I appear today on behalf of ECS to testify on P.L. 94-142, the Education for All Handicapped Children Act. Accompanying me are Mr. Joe W. (Pat) Fleming, ECS Legal Counsel and Mr. Aims C. McGuinness, Jr., ECS Coordinator of Federal Relations.

ECS is an interstate compact of 46 states, Puerto Rico and the Virgin Islands. The fundamental purpose of the Commission is to improve education in the nation through cooperative action of the states. In line with this purpose, the Commission was on record four years before P.L. 94-142 was enacted urging that states estabish policies and programs to insure that the education needs of all handicapped children were met. In fact, a number of the states which enacted progressive state laws for education of handicapped children in the early 1970's did so with the assistance of ECS and on the basis of ECS guidelines which bear a striking resemblance to P.L. 94-142.

In every communication or document prepared by ECS on P.L. 94-142, we have taken great pains to note our commitment to achieving the substantive objectives that every handicapped child in the nation actually receive a free and appropriate public education. It has become fashionable among some groups, however, to characterize ECS and the other state groups appearing before you this morning as opposed to the goals of P.L. 94-142 and as the advocates of go-slow, regressive policies.

This is not the case. We recognize, support and respect the goals and aspirations of the advocates and of those who led the fight to enact P.L. 94-142. What we ask is that ECS and the state groups represented here this morning be accorded the same recognition for our commitment to these goals.

Our concerns about P.L. 94-142 are real and are founded on the widespread and diverse concerns of governors, state legislators, state board of education members, chief state school officers, school administrators, teachers and parents of handicapped children. That our concerns have a strong foundation is reflected in the strength of the coalition of state organizations formed to recommend changes in the law, in the number of states—most of which had already made substantial commitments on their own to educate handicapped children—that have testified in support of our basic positions, and the agreement with a number of our concerns by other national groups.

As of today, there seems to be a degree of agreement on the problems (especially the financial problems) associated with implementation of P.L. 94-142 but sharp disagreement about what to do about them. The contrast is illustrated by the Administration's position as compared to the position of ECS and the coalition of state organizations: The Administration appears to view P.L. 94-142 as a set of goals or principles and sees the legal and fiscal obligations of this law as not substantially different from state laws, court orders and attorney's general opinions, or the provisions of Section 504 of the Rehabilitation Act. The Administration acknowledges that the states will have fiscal and legal problems in meeting the timetable established in the law and that as of September 1, 1978, several states may not be making a free appropriate public education available to all handicapped children in the required age ranges. Furthermore, the Administration seems to acknowledge that even though states may be in "paper" compliance full compliance may be sometime off. The Administration apparently feels strongly that it should not arbitrarily disapprove state plans, or cut off funds, provided states are making good faith efforts to comply, or are substantially in compliance (at least on paper) with, this law. The intention is to help states solve their problems rather than force them into compliance. While the Administration has acknowledged (at least privately) that there are problems with the law which cannot be solved by regulation or creative administration, their feeling apparently is that it is better to move ahead with an imperfect law than to risk retreat from the goals in an attempt to correct the law's deficiencies.

As representatives of the states, we can only applaud the Administration for its commitment to work with the states in implementation of this law. But the points on which we differ with the Administration could have profound implications for education and for state-federal relations in the future. Basically, we see the legal

commitment a state must make to meeting the timelines and procedural requirements of P.L. 94-142 as absoulute and concrete. Phrases such as "work it out over a few years," "substantial compliance," "in compliance contingent on future changes in state law or funding" just don't fit the precision of the language of P.L. 94-142. Our suspicion is that some state officials may be submitting state plans to the U.S. Office of Education making commitments which implicitly or explicity are beyond the authority of those officials to make or which exceed the resources required for fulfillment. As we understand the Administration's intention, these state plans will be accepted and, if problems exist, the Bureau of Education for the Handicapped (BEH) will try to work them out over time.

Given the disposition of the Administration, only time and—I am afraid—extensive litigation will show whether or not our fears are well founded. We are convinced that although a state may not face disapproval of a plan by BEH, it faces the strong possibility of costly and protracted litigation if it fails to recognize the seriousness of the law.

The Administration's approach appears to be predicated on the assumption that the public (especially the parents of handicapped children), does not know of the promises made in P.L. 94-142. Anybody who believes that has not been watching television or has not been in contact with other media in recent weeks. The expectations are extremely high and are being raised higher each day. Monitoring the compliance of states and local education agencies with the substantive requirements of this law will be carried out not simply by the federal government but by millions of parents throughout the country who seek from their local school an individualized education program in a regular classroom for their handicapped children.

We agree with those who say that it was only through persistent dedication to fundamental principles, a dream of a better world and the willingness to endure extraordinary hardship and resistance that the rights of blacks and other minorities were finally recognized. So also will it be with the handicapped. A fundamental question is whether the frustrations, dashed hopes, antagonisms with school officials and parents of other children and, eventually, litigation—all resulting from a perceived failure on the part of those responsible to fulfill the promises of P.L. 94-142—will really contribute materially to an assurance that all handicapped children will, indeed, receive a free appropriate public education as quickly as humanly possible. We believe that to this question the answer is "no".

The basic position of ECS and the other four state organizations which joined us in our original letter to Senator Randolph and Chairman Brademas, is that, if the expectations raised by P.L. 94-142 are to be fulfilled, certain basic flaws in the statute, beyond the reach of regulations or creative administration, will have to be resolved by amendment. The amendments proposed in our joint position of May 9, 1977, and subsequently proposed by formal resolution adopted at the ECS Annual Meeting, fall under two basic positions:

That the federal contribution authorized for fiscal year 1978 through fiscal year 1981 be substantially increased.

That relatively technical amendments be made to the statutes to eliminate ambiguities and to facilitate implementation, especially by states with well-developed special education programs predating P.L. 94-142.

Despite early confidence about the availability of hard data with regard to costs and implementation problems, we have learned how very difficult it is to find out what is really going on. Since mid-1975, ECS has not had funding specifically to support a staff capability in special education. The staffing or our efforts on P.L. 94-142 has been provided by people who already had full-time assignments in other areas and by reallocation of already scarce resources. Much of our information on state problems is anecdotal: obtained from letters from constituents, from personal contacts and from the concerns expressed by state people at the recent series of regional meetings financed by BEH of which ECS was one of the co-sponsors. Parenthetically, we applaud BEH for taking the bold step of involving state people in formulation of regulations for P.L. 94-142 and we strongly disagree with those who claim that these regional meetings simply stirred opposition to the law.

ECS and the other state organizations have made a major effort—despite the shortage of resources—to fill the information void. Much of the data on costs has come from the analysis by the National Conference of States Legislatures (NCSL) of state plans held but not analyzed by BEH. A report prepared by BEH for Congressional committees on problems in implementation being faced by states was prepared, in part, from anecdotal information supplied by our organizations to BEH at their request. In May and June, ECS conducted a telephone survey of special education directors on the issues of financing state agency supervision, due process and individualized education programs. The reliability and validity of the results were so uncertain that we did not distribute a final report. Tragically, the work-

sheets for several states were destroyed when an ECS staff member's home was gutted by fire.

In response to questions raised by Senator Randolph when ECS testified before the Senate Subcommittee in June, we are currently completing a more detailed written survey on certain aspects of state agency responsibility for education of the handicapped. The ECS Education Finance Center is undertaking a study of the implications of P.L. 94-142 for state school finance. This latter study is being supported by the National Institute of Education.

We are making progress, then, in gathering data on P.L. 94-142 implementation, but far more must be done. The dramatic changes in state laws, policies and regulations in the past year (reflecting, incidentally an overwhelmingly positive effort by states to comply with the timetables in the law) mean that, to our knowledge, no readily accessible up-to-date source of information about the actual provisions in existing state laws and policies is available. We have found that recently-published studies of state laws, of due process provisions and other matters bearing on the issues we have raised are hopelessly out-of-date for a number of states.

As we approach the effective date of P.L. 94-142, October 1, 1977, we have been undergoing a thorough review of the role ECS has been playing and should continue to play on this issue. These points now seem clear:

We remain convinced of the validity of our assessment of the legal and fiscal implications of this law for the states.

We feel an obligation to our constituents to press the basic points in our earlier communications to the Congress and the Administration.

We are fully committed to working *with* rather than against the federal government, especially BEH, in effective implementation of P.L. 94-142.

Quite frankly, we understand the reason for, but were disappointed by, Commissioner Boyer's testimony before the Senate Subcommittee on July 14 in which he essentially rejected the principal arguments presented by ECS, NCSL, NGC, NASBE and CCSSO. Given the commitment of the Carter Administration to improved federal-state relations in education, we would have hoped that before the Commissioner made his final decisions reflected in his testimony that we would have had an opportunity to meet with him:

To explain our original positions to be sure that differences were not based on misunderstandings;

To define specific areas on which we agree and on which the states and the federal government could work together to assure that there is no delay in meeting the needs of handicapped children; and

To define specific areas where further information is needed and to define jointly the tasks to be undertaken to resolve remaining problems.

I expressed these concerns to Commissioner Boyer by letter in July and just two weeks ago, on September 13, representatives of the five state organizations met with Assistant Secretary for Education Mary Berry, Commissioner Boyer, Deputy Commissioner Martin, Dr. Abramowitz of the White House Domestic Policy Staff, Dr. O'Keefe of the Assistant Secretary for Planning and Evaluation's office and representatives of the Office of Civil Rights.

From the ECS viewpoint, the meeting was both beneficial and greatly appreciated. ECS is committed to take the following actions in the coming months:

(1) Continue to press for a substantial increase in the federal contribution to the costs of implementing P.L. 94-142.

Hard, precise data on implementation costs are simply not obtainable, but given the experiences in those states which have implemented similar laws, the cost increases will be substantial. Commissioner Boyer has indicated that funding for P.L. 94-142 is his first priority for the fiscal year 79 budget and we will do everything we can with higher levels of the Administration and with the Congress to drive home how extremely important it is to meet at least the 20 percent level authorized for fiscal year 79. We remain convinced that the authorization should be increased immediately to 40 percent and that appropriations should be made to that level. To claim that federal budget constraints prevent such a commitment ignores the reality of the 1978 full service requirement and the fact that state and local governments face the same fiscal constraints. The same people pay taxes for federal, state and local budget commitments.

(2) Work cooperatively with BEH to develop facts around a selected number of critical issues which may require amendments to P.L. 94-142 by the 95th Congress, Second Session.

The Administration appears firm in its position that amendments to P.L. 94-142 should not be made at this time. Nevertheless, there is agreement that more data should be gathered in a systematic manner to provide a base on which decisions can be made by Congress and the Administration on the need for amendments early in 1978. At the meeting on September 13, the five state organizations agreed to meet with BEH at an early date to identify the issues to receive attention, the data to be collected and the timelines for preparation of reports. Without assistance from BEH in the analyses of state plans, etc., gathering of the necessary state-by-state data is beyond the capacity of ECS and the other organizations. In addition to the data gathering for decisions on the need for amendments in the Spring of 1978, there is also demonstrated need for a comprehensive effort to monitor implementation of this law. Since the states bear the principal legal and fiscal responsibility for seeing that the law is effectively implemented, we believe that monitoring of implementation ought to be a joint effort between BEH and the organizations which represent the states and the principal state political and education officials.

(3) Continue to alert the states to the legal and fiscal problems inherent in P.L. 94-142.

As suggested earlier, we interpret P.L. 94-142 as having concrete and absolute requirements for state participation. We applaud the attitude taken by the U.S. Office of Education in assisting states to move rapidly toward compliance. With expectations of parents being raised to a high degree, states and local education agencies may be faced with extensive and costly litigation if they fail to provide full service as promised. We have agreed to review our legal interpretations and advisories to states with the U.S. Office of Education prior to distribution to be sure that what we say is legally correct. We have already received confirmation from the HEW General Counsel about several of our points concerning significant differences between Section 504 of the Rehabilitation Act and P.L. 94-142 and in terms of to the implications of these laws for state governments.

(4) Work with BEH on definition of areas where technical assistance to states and LEAs is essential for substantive implementation of the law.

We are aware of some, but certainly not all, of the technical assistance efforts underway or planned by BEH. The greatest needs, in our view, are at the local level: a severe personnel shortage, the need for orientation and retraining of existing personnel, the need to make IEPs substantive rather than useless "boiler plate" compliance documents, the difficulties in achieving mainstreaming, etc. ECS is prepared to assist in any way we can to see that the changes in education policies and practices implicit in P.L. 94-142 become a reality throughout the nation.

In conclusion, may I return to a point made at the beginning of my testimony? The 46 states, Puerto Rico and the Virgin Islands joined ECS by enacting state laws committing them to work together to improve education throughout the nation. Without the commitment of the states, the goals of P.L. 94-142 are unattainable by the federal government alone. What the states need from the federal government are leadership and financial assistance, not requirements that cannot be met or costs that cannot be borne. Our aim at ECS is not to oppose the federal government but to work with the Congress and the Administration to see that federal policies stimulate, assist and complement state efforts to meet the education needs of the nation.

Thank you for the opportunity of appearing before you. We look forward to working with you over the coming year as this important law is implemented.

Mr. BRADEMAS. Thank you very much, Mr. Hill.

Mr. Brouillet.

STATEMENT OF FRANK BROUILLET, SUPERINTENDENT OF PUBLIC INSTRUCTION, STATE OF WASHINGTON, AND CHAIRMAN, COMMITTEE ON LEGISLATION, COUNCIL OF CHIEF STATE SCHOOL OFFICERS

Mr. BROUILLET. Thank you, Mr. Chairman.

I will also adhere to your suggestion. I have prepared a summary of my testimony but I will summarize my summary to speed things up.

Mr. Chairman and members of the subcommittee, I am Frank Brouillet, superintendent of public instruction in the State of Washington and also chairperson of the Council of Chief State School Officers. I come here today as representative of that group. The council represents 50 States and the six extra State jurisdictions.

Prior to being elected superintendent of public instruction of the State of Washington, I did serve 16 years in the State legislature. During that time it was my honor and privilege to sponsor and defend our own education for handicapped children legislation. That happened in 1971. Therefore I think I am aware of at least some of your frustrations and concerns about balancing the rights of the individual student and the appropriate education and the concerns of local State administrators. I would say that all of the Chief State School Officers do support the principle and philosophy of 94-142. It is an appropriate piece of legislation and it is something that I think will advance the cause of children in our country.

I would like, however, to point out some of the things that we see and we feel need to be corrected. Some of these have already been adhered to or alluded to by other members and will be, I am sure, by those following me. Let me summarize:

One is implementation timetable. As you are fully aware by the chairman's statement in 1978 an appropriate education has to be provided for all children between the ages of 3 and 18, by 1980 at the age of 21. Many of us have very comprehensive programs in place right now and we didn't get there in 2 years. It has taken the State of Washington many years to get there. So I think we have to say we consider the short timetable to be inappropriate and not realistic.

Second, the funding level, as has been indicated by 1978 as one deadline, by 1980 another. The assumption that with a 5-percent infusion of Federal money in 1978 and 20-percent assistance by 1980 that we will be able to get there in most States, again is not realistic. We are going to need considerably more assistance than that.

Also, I think as we look at this whole problem and results of funding we find States who have well-defined programs and to put everyone in the same box is very difficult. I know in our State we have we think a highly developed program under which except for the learning language disability area all children in a handicapped condition are in a program, an appropriate program. Therefore, I think it is very difficult for the Federal Government and the Congress to lump everyone in this one situation.

Distribution of funds. One of the aspects of the legislation is that a certain amount, one-half, will go straight through to the local districts. This is helpful to local districts but ignores State equalization programs and also our own plans to equalize and provide educational services to all the children in the State. We also know that some kinds of services are more expensive than others. We also have attempts by some districts to combine with others. When

the money goes through to the districts on an individual basis this makes it very difficult for a State to develop a statewide program.

State agency responsibility. One of the provisions of the law indicates that it is the responsibility of the State to assure the adequacy of all special education programs in the State. We know some of our States do not have this power constitutionally or legally. Therefore, it does create problems.

Child count. As has been indicated in the previous testimony, the children are counted on an unduplicated basis. This creates problems, first, because of the time element, the time when they are counted, and second, on the basis that it is unduplicated. We know that if a child is severely handicapped and is only counted once that money will not go far enough toward educating that child.

The last thing I would mention, Mr. Chairman and members of the committee, is the IEP, individualized education program. We understand the reason for this and we see great value in this. However, there are many of us who are concerned that this may become a binding contract with legal implications. I know right now in the State of Washington I am now being sued, which happened last week, by a citizen in Seattle because a student graduated from the city schools in Seattle and can't do certain activities. We are fearful that this type of requirement in the law may be construed by others to indicate some type of class action or some type of legal action. So we want to bring that to your attention.

I do believe anything I have said today does not detract nor change the intent of 94-142 but I think will make it easier and simpler and actually more efficient for the States to function under. I appreciate the opportunity to talk to you today and to give you our concerns. We, too, stand ready to assist in any way we can to make this landmark legislation functionally correct.

Thank you.

[The statement of Frank B. Brouillet follows:]

STATEMENT PRESENTED BY FRANK B. BROUILLET, CHAIRMAN, CCSSO COMMITTEE ON LEGISLATION AND SUPERINTENDENT OF PUBLIC INSTRUCTION, STATE OF WASHINGTON

Mr. Chairman and members of the Subcommittee, I am Frank B. Brouillet, Superintendent of Public Instruction for the State of Washington. I come before this Subcommittee not only in my official capacity as the Washington State Superintendent of Public Instruction, but also as a representative of the Council of Chief State School Officers (CCSSO), whose Committee on Legislation I chair. The Council is an organization representing the state superintendent and commissioners of education in the fifty states and the six extra-state jurisdictions. I appreciate this opportunity to share with you the concerns of our members about the implementation of P.L. 94-142, the Education for All Handicapped Children Act.

Prior to being elected Superintendent of Public Instruction, I served sixteen years in the Washington State Legislature and was the prime sponsor of our state's Education for All Handicapped Children Act in 1971. I know the frustrations of writing an act that draws a balance between the rights of handicapped students and their parents and the realism of state and local administration. It's tough to find that balance but without cooperation from all participants in the process, confrontation and divisiveness is the result.

The Council of Chief State School Officers firmly supports the intent of P.L. 94-142 to assure that all handicapped children receive a "free appropriate public education." Our members are committed to this goal and are making a sincere effort to comply with the requirements of the law and the regulations. However, the concerns expressed in our testimony today have seriously threatened state imple-

mentation efforts and must be addressed through amendment to act if the intent of Congress is to be fulfilled.

As a Chief State School Officer, I appreciate the efforts of the Congress to assist the states in fulfilling their responsibilities to handicapped children. P.L. 94-142 is a landmark piece of legislation which addresses the educational rights and needs of handicapped children. The law is comprehensive; it can be implemented; and, in my opinion, will ultimately achieve its purpose. There are issues concerning this legislation, though, that need to be refined in order to strengthen and facilitate its implementation.

I join my colleagues in CCSSO and the other state-oriented organizations in applauding the positive provisions of P.L. 94-142 which may be rightly labeled as "national goals, objectives and priorities" and which require all recipients of federal financial assistance to provide to each handicapped child:

1. special education and related services in the regular educational environment to the maximum extent feasible;
2. special education and related services without charge to his or her parents;
3. a non-discriminatory evaluation of his or her educational needs; and,
4. the right of due process of law.

Many state laws, including Washington's, already contain these general provisions, and those requirements should be vigorously pursued.

Before proceeding with specific reactions to P.L. 94-142, however, I would like to explore in a general way with you some concerns of many state officials about the proper role of the Federal government in educational matters, and how that role should be linked with state responsibilities and state circumstances. Through the years, education has been recognized as a state function. The Federal government has provided assistance to states to expand programs and serve the needs of special populations which state resources cannot meet. However, any Federal education policy must support state efforts, as well as complement and supplement them. It must recognize the differences among states in laws and structures for state policy development, planning, coordination, governance, and regulation in education.

P.L. 94-142 contradicts these principles of state-federal relations in education generally subscribed to by state-oriented organizations. While the purpose of the law assuring that "all handicapped children will have available to them . . . a free appropriate public education . . ." is welcomed and supported as appropriate by state officials, the various prescriptive sections of the law do not recognize the differences in state needs and capacities and are almost unparalleled in Federal education legislation. It is to these circumstances that we should address ourselves this morning.

These negative issues—the extreme prescriptiveness of P.L. 94-142 and its unrealistic mandates center upon the following general concerns:

1. The "full implementation by September, 1978" provision of the law (Sec. 612 (1) (B)), is an unrealistic mandate.
2. The federal funding authorizations for fiscal years 1978 through 1982 (Sec. 611 (a) (1) (A) (B) (i) (ii) (iii) (iv) (v)), are inconsistent with the timetable and are hardly commensurate with the explicit mandates of the law.
3. The "pass through" provision of federal funds to individual local educational agencies (50 percent the first year of implementation and 75 percent thereafter) (Sec. 612 (b) (1) (2) (c) (1) (2)), hinders state efforts to achieve financial equity among their local educational agencies.
4. The provision that the State Education Agency shall have ultimate responsibility for "assuring" the adequacy of all educational programming for the handicapped is overly prescriptive and runs counter to many state laws and constitutions. (Sec. 612 (6))
5. The method of determining the "number of handicapped children (Sec. 611 (a) (3)), is unrealistic and unresponsive to the reality of actually providing "appropriate" educational programming to handicapped children.
6. The individualized educational program provisions (Sec. 602 (19)), could be a potentially explosive legal issue.
7. Due Process Requirements. The new act prescribes a very specific method for protecting the due process requirements of handicapped children and their parents. The requirement that such rights be protected is a reasonable one given the difficulty that school systems have experienced in placing students in appropriate education programs. The State of Washington, for example, has a due process requirement within its laws and rules and regulations. Our difficulty is that this act substitutes a different process from the one we already have in place. In doing so, it protects no more rights than our own law already protects. It simply forces us to make expensive changes in the review process; changes which would provide no additional benefits to the students. It would be very helpful if the Congress were to

prescribe that the Office of Education review due process guarantees to see that they meet some minimal standard and, where appropriate, approve due process procedures already in place in the various states.

Implementation Timetable

In order for a state to receive Federal funds, P.L. 94-142 mandates that "a free appropriate public education will be available for all handicapped children between the ages of three and eighteen . . . not later than September 1. 1978." The maximum age is increased to twenty-one by September 1, 1980. I consider this to be an unrealistic mandate.

Many states have enacted comprehensive special education laws and have made intensive efforts to insure that handicapped children receive educational services appropriate to their needs. Those states with exemplary programs did not achieve full service overnight, however, and the states which are further behind in special education cannot be expected to comply within the timetable set in the law. Such a massive program takes time, money, personnel, facilities, and an in-depth understanding and commitment by a lot of people. It is just not realistic to assume that such a goal can be achieved in so short a time.

It would be more reasonable to provide flexibility to the states, in agreement with the proper Federal agency, to develop a feasible timetable of compliance. I predict that is exactly what will happen, anyway. Many states will not be able to comply, but they will certify that they do. The appropriate Federal agency will, then, have to question some of those certifications. Several years of charges and countercharges will ensue, and the energies and efforts of conscientious people will be spent on those activities rather than on "getting to the job" of providing appropriate educational programming for all handicapped students.

Funding Levels

The funding levels authorized in P.L. 94-142 are inconsistent with the "compliance" provisions discussed above, and are not commensurate with the explicit mandate of the law. Briefly stated, the Federal share is computed at the following rates based on the "average per pupil expenditure in public elementary and secondary schools . . .": 5 per centum—fiscal year 1978; 10 per centum—fiscal year 1979; 20 per centum—fiscal year 1980; 20 per centum—1981; and 40 per centum—1982.

This pattern of funding authorization is not consistent with the needs of the states. As they move to achieve the two compliance goals—1978 and 1980—they will need massive infusion of funds from all levels. The Federal government should be a full partner during these compliance efforts and continue that partnership once full programming is reached. The compliance requirements and the funding authorizations (and appropriations) ought to be closely related and coordinated, state-by-state. Accordingly, the Council has urged Congress to make the full funding authorization available immediately.

However, compliance and funding must be coordinated to produce the best results. We suggest that the Committee consider P.L. 94-142 implementation on a state-by-state basis. Several states already meet the goals of P.L. 94-142 through their own state programs; yet, because of procedural differences between state laws and practice and the Federal laws, may have difficulty complying. The present overmatch of state and federal contributions makes the cost effectiveness of imposing Federal procedures on state programs questionable. States which fulfill the intent and essential requirements of P.L. 94-142 should be certified and allowed to progress with their own state programs rather than be penalized for their efforts on procedural grounds. The Federal government should concentrate its efforts on assisting those states which are fartherest away from compliance in order to reach the national commitment and the intent of the law.

One final general observation is in order. In the past, the Federal government has many times "laid on" the states a multitude of prescriptive program requirements. P.L. 94-142 is no exception. Yet, the dollar commitments of the Federal government have been minimal at the very least. If the Federal government mandates costly requirements, it should be willing to pay a reasonable share of those mandates.

Distribution of Funds

The issue of the distribution mechanism of the P.L. 94-142 funds, in relation to current funding formulas within states requires comment. Would it be reasonable to allow some flexibility in distribution of the Federal funds in concert with state equalization formulas so long as the intent of the utilization of the Federal funds was met? The states have the responsibility of affording an equal and appropriate educational opportunity for every handicapped child. Equal and appropriate opportunities cannot be provided if the funding mechanism is predicated on the basis of

equivalent dollars for all. Rather, provisions should be made for placing dollars with the greatest need. States should be given latitude, not only with the utilizations of their direct entitlements but also their flow-through responsibilities, so that the best utilization of the Federal dollar can be assured. Each state has many gaps to fill, whether they be distributed on a geographic, rural-urban, or on a disability specific basis. Federal dollars could assist in filling the voids.

State Education Agency Responsibility

The provision in P.L. 94-142 that assigns to the state education agency the ultimate responsibility of "assuring" the adequacy of all special education programming will create considerable difficulty in some states whose constitutional or statutory provisions prescribe that agencies other than the state education agency are responsible for some segments of programming for handicapped children. The effort to centralize the supervisory responsibility with the state education agency is noteworthy, but the process of centralization does not necessarily guarantee effective and efficient administration. Consideration must be given to the total environment of the handicapped child encompassing the child's residential and educational needs. It may be more appropriate for other state agencies to assume the complete supervision for a child for which they are responsible, including the education of that child. Therefore, the law needs flexibility allowing supervision by state agencies other than the state education agency so that minimal standards for educational services to handicapped children are met. This could and should be monitored by the state education agency with sufficient provisions in the law to allow that monitoring to be effective. The best solution to this problem is to let existing laws in the various states be the determiner rather than trying to legislate changes in state structure at the Federal level.

Child Count

The amount of assistance provided under P.L. 94-142 in any fiscal year is contingent on the size of the Federal appropriation, the national average per pupil expenditure, and the number of special education pupils who are aid-eligible. The population of aid-eligible pupils is determined by averaging the number of handicapped children within certain age ranges receiving special education on October 1 and February 1 in the year preceding the one in which aid is actually paid. This procedure leads to an inaccurate child count (unrealistically low) because of two problems.

First, the current census procedure requires that special education students be counted on an "unduplicated" basis; that is, each child may be counted only once, no matter the number of his or her handicapping conditions. As a result, the current census makes absolutely no allowance for interstate differences in the cost and quality of special education services.

Second, current census method prohibits counting special education students on a "cumulative" basis. Children may be considered eligible for Federal aid only if they received special education on either October 1 or February 1. Children who received services at any point in the year are excluded.

I consider this provision unrealistic and unresponsive to the reality of "appropriate" programming. It is feasible to require an enrollment count on a given day or days during the course of the year. However, the annual enrollment count could be conducted on a one-time basis and probably would be more feasible if conducted December 1, or early in January in relation to the ease of assimilating the information into Federal budgets and state planning for financial resources.

In addition, there is a need to consider allowing a cumulative, and in some instances duplicative count for the generation of funds. Multi-handicapped children require extensive and costly program efforts. A speech handicapped, mentally disabled child requires a full cost effort in both providing the instructional program geared to meeting the child's speech needs and those necessitated by mental disability. To count this child only once results in a significant cost overrun in comparing funds generated in relation to program needs.

Consideration should also be given to allowing the counting of children served during the course of the year in a block programming circumstance. Particularly in rural areas, some speech handicapped children may be provided intensive therapy for a six-week period of time on a semi-annual basis and consequently may not be enrolled during the specific day or days of the actual counting of handicapped children. Hopefully, flexibility could be afforded in allowing the counting of children in these circumstances.

Individual Education Program

My last point addresses the individualized education program (IEP) provisions in the Federal legislation. There is great concern that the IEP could be construed as a legal, binding contract which could have judicial implications. Although assurance has been given that in the interpretation of P.L. 94-142 that the IEP will not be considered a binding document subject to litigation, having that principle stated in an amendment to the law could provide the needed clarification and security.

Conclusion

As in any testimony of this type, a far disproportionate amount of time has dealt with concerns relative to Congressional efforts. I would like to re-emphasize, however, that the positive aspects on P.L. 94-142 far exceed those negative issues. I have a very positive feeling about P.L. 94-142 and find absolutely no fault with the motivation and intent of its authors and proponents. However, like every monumental piece of legislation, there is room for added polish as viewed through the eyes of those of us who are charged with the responsibility of its implementation. I do not believe that anything that I have proposed would change the intent or magnitude of this vital piece of legislation, but would further the cause of total compliance on the part of states with the intent of its provisions.

Again, I appreciate this opportunity to present not only my views but also those of the Council to this House Subcommittee and thank you in advance for any consideration that may be given toward their incorporation into legislative amendments. Thank you.

Mr. BRADEMAS. Thank you very much.

Mr. Robert Benton.

STATEMENT OF ROBERT D. BENTON, STATE SUPERINTENDENT OF PUBLIC INSTRUCTION, STATE OF IOWA, NATIONAL GOVERNORS CONFERENCE

Mr. BENTON. I come to you today not necessarily as a chief State school officer but also as representative of the National Governors Association. My own Governor Ray was asked to present this testimony but was unable to, so he asked me to represent him today, which I am happy to do. I think you have appearing before you representatives of a number of State-oriented organizations and it seems to me, at least in my experience and I have been in State government 5 years, that this is the first time that we have I think State-oriented organizations come before the Congress with somewhat of a consensus and a reaction to a piece of legislation.

So, I will not go into all of the details of that consensus because most of those particular points have been presented at this particular time. I will try to limit my remarks specifically to various positions that have been enunciated by the National Governors Association.

In their meetings just recently in Detroit they did adopt an education statement. I would like to quote several points from that particular statement here.

For example, in that position paper the Nation's Governors made the following points concerning the State-Federal relationship. It seems to me this is one of the key issues that we face in this legislation and other legislation that is being passed by the Congress. In that particular statement and I quote:

Specifically the Governors believe that Federal statutes should be modified to remove existing restrictions on State initiatives to reform school aid systems and to provide programs for students with special needs. Further, Federal statutes should recognize the diversity among the States in systems of finance and governance and should permit and encourage the coordination and integration at the State level of Federal and State programs aimed at the same substantive objectives. Finally, Federal programs should not dictate administrative structures or procedures to be

uniformly applied to all States in a manner which produces conflicts with long established State statutes and policies.

I would like you to consider those particular concepts as you view what may be done with this particular piece of legislation.

More specifically, and I am going to try to be brief here because there are other organizations yet to be heard, more specifically the Governors in their meeting in Detroit did recommend the Education of All Handicapped Children Act be amended to do the following and I am going to list them one, two, three.

No. 1 on page 5 of my testimony:

Make the approval of the State plan by the U.S. Commissioner of Education a contractual obligation of the Federal Government to pay a specific share of the cost of the program.

No. 2. Eliminate the phasein of Federal authorizations and thereby to provide fiscal year 1978 Federal assistance equal to 40 percent of the national average per pupil expenditure for public elementary and secondary schools in the United States.

This recommendation I believe is more or less the standard recommendation of the organizations represented here today.

No. 3. Provide that the obligations of a State to meet a specific procedural requirement of Public Law 94-142 be deferred until such time as the Federal Government's contribution reaches the level of 40 percent recommended above.

No. 4. Maintain the mandatory passthrough of Federal funds to local education agencies but to authorize States to allocate the funds to local education agencies on the basis of a uniformly applicatory formula.

I guess to the chief State school officers here the fourth item is really one of the key issues. The States in my opinion have done a great job in recent years to equalize education funding in school districts. When you come up with a categorical funding mechanism which passes through an equal dollar to everyone regardless of the formula you have thrown a monkey wrench in the State's equalization plans. This is a concept that needs to have considerable thought at this level.

No. 5. To modify the detailed requirements for State agency supervision to leave the determination of State structure to the States. This has reference to the points that Mr. Brouillet has made. The chief State school officer by this law is supposed to certify to the Federal Government that all children receive an appropriate program in this area, whether his or her agency has authority to do that.

What we are suggesting is let the State law prevail here. If in a given State there are two or three agencies that have this particular responsibility, maybe the individual who is head of that other agency ought to have that type of responsibility rather than mandating it to the State superintendent. In my own particular case we had no problem because State law does exactly what the Federal law outlines.

No. 6. Modify the unnecessarily detailed procedural structures of due process so as to give State flexibility to establish procedures consistent with the unique State circumstances provided the substantive requirements of the Federal law are met.

No. 7. Clarify the congressional intent that the development of the required individualized education program is to be a process for involving the parent, child, and school system in the formulation of an educational program, not a legal adversary proceeding.

The National Governors Association, like the others that are represented here, also have specific recommendations. I will briefly list those. They are simliar to those given by Mr. Brouillet.

No. 1. There is some concern about the implementation date, the September 1978 to September 1980 in terms of being what is feasible to try to be able to meet those dates.

No. 2. They have the same concerns about the funding authorization. It seems to us, to a lot of people, that the reverse is here. The Federal Government is involved in only 5 percent when the greatest cost demand will be placed on the State. So that is a real concern.

No. 3. This whole business of counting the handicapped children, how they are counted, whether they should be counted in a duplicate way or in a kind of block way, these are concerns I deal with in some details in my testimony.

No. 4. The whole issue of assuring the adequacy of all of the children receiving an appropriate program, I have just commented on that and things of that particular nature. Those are circumstances and concerns that all of the organizations here today will be presenting.

I want to thank the committee on behalf of Governor Ray for the opportunity to present these thoughts to you this morning.

[The statement of Robert D. Benton follows:]

STATEMENT OF ROBERT D. BENTON, ED. D., STATE SUPERINTENDENT OF PUBLIC INSTRUCTION, IOWA DEPARTMENT OF PUBLIC INSTRUCTION, GRIMES STATE OFFICE BUILDING, DES MOINES, IOWA

Representative Brademas, Chairman of the Subcommittee on Select Education; members of the Subcommittee; staff members; advocates of appropriate educational programing for handicapped children; fellow educators; ladies and gentlemen. I am Dr. Robert D. Benton, State Superintendent of Public Instruction for the State of Iowa. I come before this Subcommittee not only in my official capacity as the Iowa State Superintendent of Public Instruction, but as a representative of the Honorable Robert D. Ray, Governor of the State of Iowa and past chairman of the National Governors' Conference, more recently renamed the National Governor's Association. Governor Ray had been asked to present testimony on behalf of the National Governor's Association but was unable to do so. He has asked me, therefore, to represent the interest of both the State of Iowa and that association. I want to express my personal appreciation to the members of this Subcommittee for the opportunity of making a presentation at this hearing.

In my role as a representative of the National Governor's Association, I shall try to convey the official position of that organization relating to P.L. 94-142. In addition, you all no doubt realize the Association has joined four other state-oriented organizations—the Education Commission of the States (ECS), the Council of Chief State School Officers (CCSSO), the National Conference of State Legislatures (NCSL), and the National Association of State Boards of Education (NASBE)—in developing an indepth analysis of P.L. 94-142 and have collectively agreed to a set of recommended amendments to the law. These recommendations will also be "touched on" in my testimony.

First, however, let me speak to P.L. 94-142 from the perspective of being the Iowa State Superintendent of Public Instruction. Long before P.L. 94-142 was passed, I have been committed to improving special education programs and services for the handicapped children in my state. My extensive experience and efforts have been both rewarding and painful. My "reward" is exemplified by the thousands of additional handicapped youngsters in Iowa who are receiving for the first time an "appropriate" educational program. My "pain" is embodied by all of my frustrations

and the lack of understanding on the part of many groups of people—legislators, fellow educators, taxpayers, and the general public—in the drive to fulfill the goal of appropriate educational programing for *all* youngsters, regardless of their handicapping conditions.

As a chief state school officer, I am appreciative of the efforts Congress has made to assist the states in fulfilling their responsibilities to handicapped children. P.L. 94-142 is a landmark piece of legislation which addresses the educational rights and needs of handicapped children. The law is comprehensive; it can be implemented; and, in my opinion, will ultimately achieve its purpose. There are issues concerning this legislation, though, that need to be refined in order to strengthen and facilitate its implementation.

Before proceeding with specific reactions to P.L. 94-142, however, I would like to explore in a general way with you some ideas and concerns that many of us who are state officials have relating to the proper role of the federal government in educational matters.

This very issue was discussed at some length in June of this year during the Eleventh Annual Meeting of the Education Commission of the States in New York City. Similar concerns, I am told, were also discussed at the recent Governors' Conference in Detroit and have been dealt with at meetings of the other state-oriented organizations. I shall present the National Governors' Association position first and then briefly reiterate the ECS stand in this matter.

In an "Education" position paper adopted by the nation's governors at their recent meeting in Detroit, the following statement was made concerning state-federal relationships:

Specifically, the governors believe that federal statutes should be modified to remove existing restrictions on state initiatives to reform school aid systems and to provide programs for students with special needs. Further, federal statutes should recognize the diversity among the states in systems of finance and governance and should permit and encourage the coordination and integration at the state level of federal and state programs aimed at the same substantive objectives. Finally, federal programs should not dictate administrative structures or procedures to be uniformly applied to all states in a manner which produces conflicts with long-established state statutes and policies.

This position by the nation's governors coincides nicely with a similar policy statement adopted at a meeting earlier this year of the Education Commission of the States which suggested that the federal role in education should be:

1. To enunciate national goals, objectives and priorities that may transcend the concerns of individual states or the capacity of states to resolve or respond to them acting individually;

2. To see that national goals, objectives and priorities are attained through federal policies which supplement and complement state efforts to meet the same needs and to give states assistance and incentives to meet national goals in the context of differing state circumstance.

3. To that end, the ECS Policy Statement suggests that the functions and goals of federal educational program initiatives should be:

1. To support the fulfillment of the national goal of equality of educational opportunity without regard to a person's race, sex, age, national origin, ethnic or cultural heritage, handicapping condition, economic status or geographic location;

2. To stimulate and support research in relation to efforts to improve education in the states and to support demonstration of effective strategies and programs related to issues of national priority;

3. To build an educated and informed citizenry for effective functioning of a democratic society.

All of this, of course, is predicated on the overriding concept that education is basically a state function. It follows then, that any federal education policy must be supportive of the states' efforts and must recognize and take into consideration:

1. The differences among states in education needs and problems and in the state efforts and capacities to respond to these needs and problems;

2. The differences among states in laws and structure for state policy development, planning, coordination, governance and regulation in education.

I realize that all may not agree with these points, but I present them as a basic premise from which I will discuss the merits and concerns that many of us have concerning P.L. 94-142 and its implementation.

I would submit that P.L. 94-142 presents a dichotomy in fulfilling those principles of state-federal relations in education as expressed both by the Governors' Association in the ECS policy statements and generally subscribed to by other state-oriented organizations. On the one hand, the stated purpose of P.L. 94-142, which is "to assure that all handicapped children will have available to them . . . a free

appropriate public education . . .," responds in a very positive way to the enunciation of "national goals objectives and priorities that may transcend the concerns . . . or the capacity of states to . . . respond . . . individually." On the other hand, the prescriptiveness of the various sections of P.L. 94-142 relating to the states' administration of the law, i.e., the provisions in "Entitlements and Allocations"—Sec. 611; "Eligibility"—Sec. 612; "State Plans"—Sec. 613; "Application"—Sec. 614; and "Procedural Safeguards"—Sec. 615, is almost unparalled in federal educational legislation. This prescriptiveness certainly doesn't fulfill the goal of recognizing the "differences among states in education needs and problems and in the[ir] . . . efforts and capacities to respond to these needs and problems," nor does it take cognizance of the "differences among states in laws and structures . . . in education."

A further word about the positive aspects of P.L. 94-142 is in order. I join my colleagues in CCSSO and the other state-oriented organizations in applauding the following provisions of P.L. 94-142 which may be rightly labeled as "national goals, objectives and priorities" and which require all recipients of federal financial assistance to provide to each handicapped child:

1. special education and related services in the regular educational environment to the maximum extent feasible;
2. special education and related services without charge to his or her parents;
3. a non-discriminatory evaluation of his or her educational needs; and,
4. the right to due process of law.

Many state laws, including Iowa's, already contain these general provisions, and those requirements should be vigorously pursued.

Finally, it is to the negative issues—the extreme prescriptiveness of P.L. 94-142 and some of the unrealistic mandates of the law—that I will address my remaining comments. First, I shall present several rather general recommendations of the National Governors' Association, followed by some specific recommendations ascribed to by the four state-oriented groups mentioned previously. Specifically, the National Governors' Association recommends that the Education for all Handicapped Children Act (P.L. 94-142) be amended to:

1. Make the approval of the state plan by the U.S. Commissioner of Education a contractual obligation of the Federal government to pay a specific share of the costs of the program;
2. Eliminate the phase-in of Federal authorizations and thereby to provide in fiscal year 1978 Federal assistance equal to 40 percent of the national average per pupil expenditures for public elementary and secondary schools in the U.S.;
3. Provide that the obligation of a state to meet the specific procedural requirements of P.L. 94-142 be deferred until such time as the Federal goverment's contribution reaches the level of 40 percent recommended above;
4. Maintain the mandatory pass-through of Federal funds to Local Educational Agencies, but to authorize states to allocate the funds to Local Educational Agencies on the basis of a uniformly applicable formula;
5. Modify the detailed requirements for state agency supervision to leave the determination of state structure to the states;
6. Modify the unnecessarily detailed procedural structures of due process so as to give states the flexibility to establish procedures consistent with unique state circumstances provided the substantive requirements of the Federal law are met; and
7. Clarify the congressional intent that the development of the required individualized educational program is to be a process for involving the parent, child, and school system in the formulation of an educational program, not a legal adversary proceeding.

These specific recommendations were followed by a further proposition that Governors examine thoroughly the costs to a state of the legal commitments and procedural provisions of P.L. 94-142 in comparison to the dollars the state will receive under the program. The decision of a state to participate in P.L. 94-142 should be consciously made on the basis of the benefits for handicapped children that will result from the program.

Finally, let me discuss with you the following general concerns which have been enunciated by the four state-oriented groups previously mentioned:

1. The "full implementation by September 1978" provisions of the law [Sec. 612(1)(B)], which I consider an unrealistic mandate.
2. The federal funding authorizations for fiscal years 1978 through 1982 [Sec. 611(a)(1)(A)(B)(i)(ii)(iii)(iv)(v)], which I consider to be inconsistent with the provisions listed in "1" above and which are hardly commensurate with the explicit mandates of the law.
3. The method of determining the "number of handicapped children" [Sec. 611(a)(3)], which I consider to be unrealistic and unresponsive to the reality of actually providing "appropriate" educational programing to handicapped children.

4. The provision that the state educational agency shall have ultimate responsibility for "assuring" the adequacy of all educational programing for the handicapped even in other state agencies mandated by individual state law to have a "piece of the action" [Sec. 612(6)], which I consider to be overly prescriptive.

5. The "pass through" provision of federal funds to individual local educational agencies (50% the first year of implementation and 75% thereafter) [Sec. 612(b)(1)(2)(c)(1)(2)], which I consider to be overly prescriptive and destructive to some states' efforts to achieve some semblance of financial equity among their local educational agencies.

6. The individualized educational program provisions [Sec. 602(19)], which I believe to be potentially legally explosive.

I shall now discuss these six items in some detail. In order for a state to receive federal funds, P.L. 94-142 mandates that "a free appropriate public education will be available for all handicapped children between the ages of three and eighteen . . . not later than September 1, 1978." The maximum age is increased to twenty-one by September 1, 1980. As indicated earlier, I consider this to be an unrealistic mandate.

Let me cite the Iowa experience to illustrate the point. When Iowa passed its "appropriate education" law in 1974 to be implemented by July 1, 1975, it was estimated that approximately 30 percent of those needing special education programs were actually receiving them. After an intensive effort and the infusion of many millions of local and state dollars during the past two years, it is estimated that about 70 percent of those in need of special education programming are now receiving it. Our goal, from the very beginning, was to reach full programming by 1980, and we intend to do so.

My point is this, though; Iowa is one of the few states that has such a comprehensive and all-inclusive special education law. And, Iowa is one of the few states that has increased its expenditure level so markedly. Yet, it is questionable whether I as chief state school officer will be able to certify that all handicapped children in the three- to eighteen-year age bracket will be in "a free appropriate public education program" by September 1, 1978, not because we don't want to nor because we haven't tried. The real fact is that a state does not go from a point of 30 percent to 100 percent overnight. It takes time, it takes money; it takes personnel; it takes facilities; and it takes an indepth understanding and commitment by a lot of people to make such strides. It is not realistic to assume that such a goal can be achieved in so short a time. We in Iowa will probably be closer than the vast majority of the states in being able to conscientiously so certify, but it will be marginal.

How much more reasonable it would be for the law to provide flexibility to the states, in agreement with the proper federal agency, to develop a feasible timetable of compliance with a five-year period being the parameters. I predict that is exactly what will happen, anyway. Many states will not be able to comply, but they will certify that they do. The appropriate federal agency will, then, probably have to question some of those certifications. Several years of charges and countercharges will ensue, and energies and efforts of conscientious people will be spent on those activities rather than on "getting to the job" of providing appropriate educational programming for all handicapped students.

As a final thought on this subject, and as a lead-in to the next topic, I would suggest that the method of providing the federal funds to a state could be tied in some way to the level of compliance. For example, if a state is at the 50 percent compliance level, it could be provided with 50 percent of its full authorized entitlement.

The funding authorization provisions, as I indicated earlier, are, in my opinion, inconsistent with the "compliance" provisions discussed above, and are not commensurate with the explicit mandate of the law. Briefly stated, the funding authorizations provided for the federal share to be computed at the following rates on the "average per pupil expenditure in public elementary and secondary schools . . .": 5 per centum—fiscal year 1978; 10 per centum—fiscal year 1979; 20 per centum—fiscal year 1980; 20 per centum—1981; and 40 per centum—1982.

This pattern of funding authorization, it seems to me, is not consistent with the needs of the states. As they move to achieve the two compliance goals—1978 and 1980—they will need massive infusion of funds FROM ALL LEVELS. It would seem reasonable that the federal government ought to become a full partner during these compliance efforts and, then, continue that full partnership once full programming is reached. I return to my general recommendations made earlier—the compliance requirements and the funding authorizations (and appropriations) ought to be closely related and coordinated, state-by-state.

I realize this position is slightly different from that taken by the Council of Chief State School Officers, which I represent here today, and the other state-oriented

organizations. Their basic recommendation is that the full funding authorization be made available to the states immediately. I understand the basic rationale of the recommendations, but having just gone through a "crash program" of implementation in Iowa, I know that "too much" money "too soon" can be counter-productive. Thus, in my role as the Iowa State Superintendent of Public Instruction, and based on my experiences in this area, I feel strongly that, given proper planning, the compliance and funding must be coordinated to produce the best results.

One final general observation is in order. In the past, the federal government has many times "laid on" the states a multitude of prescriptive program requirements. P.L. 94-142 is no exception. Yet, the dollar commitments of the federal government have been very minimal, to say the least. To put it very bluntly, the federal government should "put its money where its mouth is." If the federal government is going to mandate costly requirements, it should be willing to pay a reasonable share of those costly mandates.

Again, let me use Iowa to illustrate this point. In the academic year just passed, the rate of state to federal excess cost commitment in special education was 30 to 1. In the current projection for the 1977-78 school year, it will be 25.5 state excess cost dollars to one federal excess cost dollars. The same ratio would be evident for local excess cost dollars. When considering the federal mandates contained in P.L. 94-142, the federal financial commitment (one federal dollar for every 51 state and local dollars) can hardly be called a "reasonable" partnership.

The child count issue in P.L. 94-142 deserves attention. As indicated earlier, I consider this provision unrealistic and unresponsive to the reality of "appropriate" programming. It is feasible to acquire an enrollment count on a given day or days during the course of the year. However, the annual enrollment count could be conducted on a one-time basis and probably would be more feasible if conducted December 1, or early in January in relation to the ease of assimilating the information into federal budgets and state planning for financial resources.

In addition, there is a need to consider allowing a cumulative and in some instances duplicative counting for the generation of funds. Multihandicapped children require extensive and costly program efforts. A speech handicapped, mentally disabled child requires a full cost effort in both providing the instructicnal program geared to meeting the child's speech needs and those necessitated by mental disability. To count this child only once generates a significant cost overrun in comparing funds generated in relationship to program needs.

Consideration should also be given to allowing the counting of children served during the course of the year in a block programming circumstance. Particularly in rural areas some speech handicapped children may be provided intensive therapy for a six-week period of time on a semi-annual basis and consequently may not be enrolled during the specific day or days of the actual counting of handicapped children. Hopefully, flexibility could be afforded in allowing the counting of children in circumstances such as this.

The provision in P.L. 94-142 that assigns to the state education agency the ultimate responsibility of "assuring" the adequacy of all special education programming will create considerable difficulty in some states whose constitutional or statutory provisions prescribe that agencies other than the state education agency are responsible for some segments of programming for handicapped children. The effort to centralize the supervisory responsibility with the state education is noteworthy, but the process of centralization does not necessarily guarantee effective and efficient administration. Consideration must be given to the total environment of the handicapped child encompassing the child's residential and educational needs. It may be more appropriate for other state agencies to assume the total responsibility for a child including the education of that child. Therefore, the law needs flexibility allowing supervision by state agencies other than the state education agency so that minimal standards for educational services to handicapped children are met. This could and should be monitored by the state education agency with sufficient provisions in the law to allow that monitoring to be effective. Probably, the best solution in this area is to let existing laws in the various states be the determiner rather than trying to mandate this federally.

Closely related to the "single state agency responsibility" is the surrogate parent provision. In my opinion, the surrogate parent provisions in the law should be modified. A surrogate parent assigned to a handicapped child should not be directly involved in the educational process of that child. However, there should be no concern inherent in a person serving as a surrogate parent who is employed by a state agency other than that providing the direct educational program.

The issue of the distribution mechanisms of the P.L. 94-142 funds, in relation to current funding formulae within states requires comment. Would it be reasonable to allow some flexibility in distribution of the federal funds in concert with state

98-811 O - 78 - 3

equalization formulas so long as the intent of the utilization of the federal funds was met? The states have the responsibility of affording an equal and appropriate educational opportunity for every handicapped child. Equal and appropriate opportunities cannot be provided if the funding mechanism is predicated on the basis of equivalent dollars for all. Rather, provisions should be made for placing dollars with the greatest need. States should be given latitude, not only with the utilization of their direct entitlements but also their flow-through responsibilities, so that the best utilization of the federal dollar can be assured. Each state has many gaps to fill, whether they be distributed on a geographic, rural-urban, or on a disability specific basis. Federal dollars could assist in filling the voids.

My last point addresses the individualized educational program (IEP) provisions in the federal legislation. There is great concern that the IEP could be construed as a legal, binding contract which could have judicial implications. Although assurance has been given that in the interpretation of P.L. 94-142 the IEP will not be considered a binding document subject to litigation, having that principle stated in an amendment to the law would provide the needed clarification and security.

As in any testimony of this type, a far disproportionate amount of time has dealt with concerns relative to congressional efforts. I would like to reemphasize, however, that the positive aspects on P.L. 94-142 far exceed those negative issues. I have a very positive feeling about P.L. 94-142 and find absolutely no fault with the motivation and intent of its authors and proponents. We in Iowa, because of or existing state laws and our "head start" toward providing appropriate education programming to all handicapped children, will have comparatively few problems in implementing P.L. 94-142. However, like every monumental piece of legislation, there is room for added polish as viewed through the eyes of those of us who are charged with the responsibility of its implementation. I do not believe that anything that I have proposed would change the intent or magnitude of this vital piece of legislation, but would further the cause of total compliance on the part of states with the intent of its provisions.

Mr. BRADEMAS. Thank you very much, Mr. Benton.

Mr. William Brown.

STATEMENT OF WILLIAM BROWN, DIRECTOR, HANDICAPPED PROJECT FOR THE NATIONAL ASSOCIATION OF STATE BOARDS OF EDUCATION (NASBE)

Mr. BROWN. Mr. Chairman, members of the subcommittee, I am William Brown appearing on behalf of the National Association of State Boards of Education. NASBE represents State boards of education in 52 of the 57 States and extra-State jurisdictions. We appreciate this opportunity to share with your own concerns regarding implementation of Public Law 94-142. I will summarize in the interest of brevity.

We do wish to recognize the efforts of this subcommittee in the enactment of Public Law 94-142. Its intent reflects the wisdom underlying many good educational practices and we hope that will benefit handicapped children in the years to come. The NASBE membership shares with you the goal of achieving an appropriate education for each handicapped child. We sincerely hope that in order to achieve this goal the Federal, State, and local efforts can be coordinated and complementary, working together toward the purpose of the act. What is being faced now is the process of implementation involving a massive social change.

This is to be initiated through our educational system. The promises to the handicapped children and their parents are great and many. To achieve them we must work together. Our concern is to make the act effective, not in a massive manner and not in terms of paper compliance but to make it achieve its goals. Toward that end we believe several points must be addressed including child count procedures, funding, equalization, and personal preparation.

In terms of the child count, securing an accurate child count of the number of handicapped children served in each State is critical. State entitlement is based on the number of children counted and the services that be rendered to the children are closely alined to the amount of money available.

The problems with the current count are three. One, it is nonduplicative, noncumulative, and it is an average count. The requirements present somewhat of a dichotomy, the act requires provision of appropriate educational and related services. Yet these aggregated services and related costs, are not reflected when you consider the counting mechanism is achieved on a head-count basis. Some examples will clarify this.

Considering the nonduplicated counting, a handicapped child requiring only part-time instructional help from a resource room teacher is counted the same as a multihandicapped child who requires occupational therapy. These children are counted the same, yet the costs are greatly divergent. The noncumulative count misses many children during the school year who have actually provided services. While most speech and hearing clinicians may have only about 80 children on the roll in any given time, the actual number of children they serve throughout the school year is much greater than that.

Often these services are not required on a daily basis which could result in a lower reported child count should the children not be served on the day the count is taken. Also, services could be provided and completed between the October 1 and February 1 count date, again missing the children in terms of the services that were provided.

The average count is not representative due to the nature of the services being provided. Speech therapy caseload representing a large proportion of the children who are served are just being determined when the October 1 count is due. These counts reported by the States for the date are low and probably will remain so. The averaging of this low count with a count taken later in the year can do nothing but achieve an overall low count.

In order to rectify this we recommend that the count be taken on a service basis representing the cumulative services provided to the children. Being sensitive to the nature of your needs and the appropriation process, we recommend that the count be taken some time at a December date.

The issue of sufficient funding lies at the heart of Public Law 94-142 and it affects the capacity and ability to deliver appropriate education to handicapped children. The educational system is under powerful attack on the grounds of not fulfilling the constitutional right of citizens to an education, an attack on the basis of racial discrimination, minimum levels of educational attainment and denial of equal opportunities to the handicapped.

A most astute observer of the American destiny, DeToqueville predicted a change in the locus of power from the local parochial toward national centralization and on many issues he was correct. Our traditional system of education is continually facing the controversy of local control, States' rights and Federal intervention. Yet the transitional times we are in, reflect a desperate need for a new approach and cooperative responsibility. To face the issue

directly the question can be and has been asked, why should an increased Federal contribution be made to support the education of the handicapped children when it is a responsibility of the States? Consider that American education after more than a decade of tremendous expansion is being shaken by a pervasive financial crisis, this fiscal crisis is permeating all the halls of education. Our testimony reflects some of these effects on the local and State levels and we are sensitive to both programmatic and financial expansions at the Federal level.

The concern we set forth is that this preoccupation with who should pay ignores the identification of conditions and values associated with public education of handicapped children which can best be secured. We cannot afford to allow this preoccupation to affect the capability to deliver services. The situation at the local and State levels is critical. Implementation of Public Law 94-142 is already having the effect of taking teaching positions from regular education programs to fulfill the needs of special education programs.

Yet regular education is also facing problems of raising the quality of educational services. The initial implementation of 94-142 is going to be tremendously expensive and where the most funds are needed. Therefore we seek relief at the Federal level, recommending that the Federal contribution be increased to the 40-percent level and maintained there. Its promises to the handicapped children and their parents are too great to permit the act to fail for lack of funding.

Equalization has been addressed by prior persons on the panel. Our States are under tremendous pressure from courts throughout the land to distribute funds equitably throughout the State. The flat-grant basis in 94-142 with the pass-through to locals totally ignores the principles of equalization. It has to be addressed in some manner.

We recommend that the percentage of the pass-through remain the same for fiscal year 1978-79 and thereafter but that the funds be allocated in accordance with equalization formulas specified in the annual program plans.

Personal preparation. The principle of least restrictive environment is going to see a tremendous increase in the number of regular classroom teachers who are going to educate handicapped children. Despite this fact most of these personnel have received no preparation at all or training to assist them in this task. The Bureau of Education for the Handicapped has been sensitive to this in reorganizing and reprioritizing their funding available under part (d) to provide for training activities. Yet the level of funding included in part (d) is relatively low. We do not believe it is sufficient enough to meet the needs of preparing regular classroom teachers to teach handicapped children.

We recommend that these funds included in part (d) be increased to allow for this to happen.

In conclusion, we thank you for your time and for listening to our concerns and we will assist in any manner that we can in helping to implement this law. We have worked actively and we view the Federal contribution as helping us if we can work through some of the problems we have set forth.

Thank you.

[The statement of Mr. William Brown follows:]

STATEMENT OF WILLIAM D. BROWN, NATIONAL ASSOCIATION OF STATE BOARDS OF EDUCATION

Mr. Chairman, members of the Subcommittee; I am William Brown, Director, Handicapped Project for the National Association of State Boards of Education (NASBE), an organization representing the state boards of education in fifty-two of the fifty-seven state and extra-state jurisdictions. We appreciate this opportunity to share with you the collective concerns of our membership regarding implementation of P.L. 94-142, the Education for All Handicapped Children Act of 1975. NASBE wishes to recognize the dedication and commitment of this Subcommittee and the Congress as a whole in its continuing efforts to provide handicapped children with appropriate educational services. The development and enactment of legislation for the handicapped included in both P.L. 93-380 and P.L. 94-142 resulted from a long process of intensive investigation and information gathering on behalf of the Congress and, more specifically many of the members on this Subcommittee. This legislation has had an effect in assisting states to improve and expand educational services to handicapped children.

The NASBE membership shares with you the goal of achieving an appropriate educational program for each handicapped child. State board of education members have been actively working to insure that policies, procedures, and regulations are developed and implemented in the states to comply with the requirements of P.L. 94-142. Prior efforts in many states to achieve this goal may be enhanced by a substantial federal effort to arrive at the same end. It seems that now, the task to be faced is the process of achieving the goal of appropriate educational services for the handicapped. In order to make this process most effective and efficient, we set forth our concerns and recommendations.

Child Count

Securing an accurate child count of the number of handicapped children served in each state is a critical issue due to the inter-related factors that the state entitlement is based upon the number of children counted, and that services which can be provided are closely aligned to the amount of money available. Section 611(a)(3) of the Act states that the count is to be determined by "the average of the number of such children receiving special education and related services on October 1 and February 1". This non-duplicative, non-cumulative, average count does not accurately reflect either the number of children served or the costs of special education services being provided to handicapped children.

Under the non-duplicated count requirement, the handicapped child who receives service from a resource room teacher would be counted the same as the multiply handicapped child who receives services from a full-time special class teacher, a speech therapist, occupational therapist, and adaptive physical education specialist. The amount of funding generated by each child to the state or local educational agency would be equal while it is clearly evident that the costs of educating the two children are widely discrepant. This holds true for children classified by the same type of handicapping condition. A mildly mentally handicapped child who requires only supplemental instructional help is considerably less expensive to educate than a mildly mentally handicapped child requiring speech and audiology services, adapted vocational services, and special instructional help. Yet due to current counting procedures, each child is considered the same. The services required by a handicapped child are not necessarily indicated by the type of handicap and do not reflect the actual costs involved in providing services.

Another significant deterrent to determining an accurate child count is the lack of a provision for a cumulative count. While services are being provided to handicapped children over the entire school year, the initiation and duration of the services vary according to the handicapping condition and the individual needs of the child. For example, while most speech and hearing clinicians may only have 80 children enrolled for therapy at a given time who would be eligible to be counted, the actual number of children provided these services during the school year would be much greater. Often these services are not required on a daily basis which could result in a lowered reported child count should the children not be served on the child count dates required by P.L. 94-142.

In addition, the stipulation for an average count complicates the process of determining an accurate number of children served. The October 1 count date occurs very close to the opening of the school year and the counts reported by the states for this period are low, and most probably will remain so. This is due to the

nature of the services being provided; itinerant staff are developing caseloads, screening and diagnoses are a continuing process, and staffing needs are being filled as children are identified and placed. The averaging of this low count with a count taken later in the year can achieve nothing but a lowered overall count.

A survey of 35 state educational agencies completed at the beginning of this year indicated some of the problems of the current counting mechanism; 396,000 multiple services to handicapped children were not counted due to the unduplicated count, 380,000 were not recorded due to the non-cumulative stipulation, and 299,000 handicapped children were receiving services not included in the October 1 count. Since both the state entitlement and local funding are determined by the child count, the current requirement hinder instead of facilitate the flow of funds designed to insure programs and services to handicapped children.

To provide a solution to this issue we recommend that the count be based upon the actual services provided to handicapped children. It follows that if services form the basis of appropriateness, rather than handicapping conditions, then the services should be counted. Further, the services should be considered on a cumulative basis to realistically reflect the efforts of state and local educational agencies to appropriately serve their handicapped children. This count should be taken later in the school year to allow full caseloads to be established. However, being sensitive to the fact that this information is vital to the Congressional budget process, we recommend that the count be taken during the first week of December.

Funding Issues

P.L. 94-142 is designed as a formula grant act "to assist states and localities to provide for the education of all handicapped children". The formula utilized to allocate funds to states is based on the number of children recieving special education and related services in a state multiplied by a percentage of the national average per pupil expenditure. This percentage is set at 5 percent for fiscal year 1978, and increases in subsequent years to 10 percent for fiscal year 1979, 20 percent for fiscal year 1980, 30 percent for fiscal year 1981, and 40 percent for fiscal year 1982 and all subsequent years. In determining this formula, the federal government has recognized that the costs of educating our nation's handicapped children are substantially higher than for educating regular children and that, in order to achieve some equality of opportunity for the handicapped, a significant effort must be set forth from the federal level. The commitment to share 40 percent of these costs in 1982 and henceforth is commendable. However, viewing the massive financial outlay required to expand and improve existing programs and to develop new programs for those handicapped children previously unserved or inadequately served, the 40 percent offered in 1982 does not come soon enough.

Local governments have, and will continue, to carry the major responsibility for financing public education with the majority of revenue being derived from local property taxes. Educational costs have risen substantially over the past 20 years. Local government property tax revenue increased over 100 percent during the period of 1962 to 1973 to help pay these increased costs. In the late 1960's and early 1970's, a growing reluctance has been building to support the increased costs of public education. Voter approval of local school bond and special levy elections has decreased steadily from 74.4 percent in 1965 to 46.3 percent in 1975. The mandates of P.L. 94-142 with the additional costs necessary for implementation will be thrust onto localities striving to overcome increased energy costs, rising food prices, and numerous other additional expenses. The general decline in supporting increases for public educational costs presents an ominous signal to the promises made to our handicapped children in P.L. 94-142 when considering trends at the local level.

State governments have faced a similar situation resulting in dramatic increases in per-capita revenue. NCES reported that from 1965 to 1975 sales tax receipts increased more than 150 percent, corporate income tax receipts more than 200 percent, and personal income tax receipts by nearly 400 percent. The expansion of special education programs in the states has been a priority issue and has benefited from the increased revenue sources. While exact expenditures are difficult to determine due to particular funding mechanisms and variations of categories in the different states, the attached chart provides an indication of this trend and shows the increased efforts to provide additional funding for handicapped children from the state level. These vast increases have not come about easily. Just as the federal government, the states face similar demands for scarce resources. In most instances this demand has been met from the expanded revenues and by reallocations of existing sources. Realistically, taxpayers can be asked to increase their contributions by only so much before they perceive the costs as detrimental to their general well-being. There is also a limit on the degree to which reallocations from existing

sources can be made. Conditions are such that states are pushing the limits for each of these practices.

A recent study by the Congressional Budget Office reported that current demands for educational expenditures at the state and local levels are likely to exceed educational revenue-raising ability for at least the next several years. Estimating the cost of implementation of P.L. 94-142 is difficult with figures being cited from $3 billion to $9 billion. Nevertheless, it will be tremendously expensive, especially during the next few years when programs are being developed and expanded. Recognizing that revenue-raising capabilities at state and local levels are limited, educational agencies face the alternative of cutting back educational services to regular students. Rhode Island has reported eliminating teaching positions in general education programs in order to increase necessary special education personnel. It cannot be theorized that this was the intent of P.L. 94-142 as the viability of our society depends upon a well educated populace. Yet the reality of scarce funding has, and most probably will continue, to make this practice necessary.

It can be argued that states ought to bear the major burden of financing handicapped education since they are generally under their own mandates and court orders to provide such services. It can be argued that any additional funding as provided by P.L. 94-142 can only assist states in achieving their own goals. We do not deny that states are responsible for achieving these mandates. However, a review of state special education legislation reveals many unique characteristics as to achieving appropriate services, phase-in programs, assuring procedural rights, and monitoring service providors. These mandates were developed with consideration of both programmatic and financial abilities specific to each state. P.L. 94-142 imposes many additional specific uniform standards calling for major changes in existing state mandates, and often initiating provisions over and above those required by state mandates. Examples of this specificity required by the Act include: audit accounting systems, specialized reporting mechanisms, individualized educational programs, and numerous related services.

Realizing the pressures existent on the federal budget and the emphasis for it to be brought into balance, we recommend, in view of the high degree of specificity included in P.L. 94-142, that the level of funding be authorized and appropriated at the 40 percent level, commencing fiscal year 1978-1979. While the task to be achieved is large, this task can be accomplished if federal, state and local sources share the burden and work cooperatively to improve services to handicapped children.

Equalization

Many states currently have plans in effect to allocate funds on an equalized basis. Court rulings continue to make it clear that an equitable distribution of funds within a state must be achieved. P.L. 94-142 requires that 50 percent of state funds be passed through to local educational agencies in fiscal year 1978, and that 75 percent be passed through in fiscal year 1979 and years thereafter. The pass-through is not an onerous concept in itself since the majority of direct educational services will be provided at the local level. The problem is that the pass-through is done on a flat grant basis, determined by the number of children served. The provision of these flat grants outside of state equalization formulae runs counter to state and federal efforts to achieve equalization of education funding.

The resolution of this issue could be accomplished by having states pass through the funds in accordance with an equalization plan submitted in the annual plan stating the formula for distribution which takes into account factors such as per capita income and property tax wealth.

Personnel Preparation

P.L. 94-142 requires that handicapped children must be educated in the least restrictive educational environment to the maximum extent possible. A report by the Comptroller General indicates that this trend is increasing. Implementation of the concept of least restrictive environment will ultimately result in substantial numbers of mildly handicapped children receiving their instruction in regular classrooms from regular classroom teachers. It follows that the success or failure of the Act will be dependent on the quality of instruction provided by the regular classroom teachers. A cursory examination of most certification requirements and degree programs of institutions of higher learning shows that not even introductory courses in special education are required for regular classroom teachers. It is critical that these teachers who will be in direct contact with handicapped children receive inservice training to develop skills necessary to teach effectively.

The Bureau of Education for the Handicapped has been in the forefront in utilizing its resources to encourage necessary inservice and pre-service programs to

facilitate implementation of P.L. 94-142. NASBE appreciated the clarification which B.E.H. provided in the final Rules and Regulations regarding the use of Part B monies for inservice training in regard to meeting priorities I and II of the Act. However, our concern lies in the limited amount of funding available for training personnel under Part D. We strongly support these training endeavors and believe that the success of the Act will be directly dependent upon trained and qualified manpower. We therefore recommend a substantial increase for Part D training.

In conclusion, NASBE commends the Subcommittee and the Congress for their foresight and interest in the future of our nation's handicapped children. The state boards of education will continue to work to meet the mandates of P.L. 94-142. We ask that you remain sensitive to the difficulties we have set forth and urge that federal, state, and local efforts be combined to achieve an appropriate education for all handicapped children.

SPECIAL EDUCATION REVENUE FROM STATE SOURCES

[Fiscal years]

				Percent increase	
	1972	1975	1976	1972–1975	1975–1976
U.S. total	$901,697,100	$2,039,597,500	$2,477,955,000	126.0	21.6
Alabama	9,843,700	28,350,000	34,630,000	188.0	22.2
Alaska	4,094,500	9,390,400	12,137,000	129.3	29.3
Arizona	3,209,200	16,635,500	20,500,000	418.4	23.2
Arkansas	485,000	6,743,200	8,959,000	1,290.3	32.9
California	154,009,600	207,304,000	230,658,900	34.6	11.3
Colorado	6,750,000	22,665,000	24,600,000	235.8	8.5
Connecticut	15,705,700	51,119,000	60,280,000	225.5	17.9
Delaware	8,800,000	16,900,000	19,900,000	92.0	17.8
Florida	42,842,400	113,514,600	137,000,000	165.0	20.7
Georgia	18,178,000	43,138,600	62,064,000	137.3	43.9
Hawaii	6,636,700	8,534,400	9,227,000	28.6	8.1
Idaho	1,900,500	9,311,000	11,623,000	389.9	24.8
Illinois	59,575,000	115,066,000	135,950,000	93.0	18.2
Indiana	3,756,900	16,500,000	22,010,000	339.0	33.4
Iowa	3,700,000	10,765,000	38,650,100	190.9	259.0
Kansas	3,841,000	9,476,000	12,108,000	146.7	27.8
Kentucky	11,665,600	20,427,000	32,436,000	75.1	58.8
Louisiana	1,675,300	31,450,300	44,474,500	1,777.3	41.4
Maine	1,352,600	4,350,000	5,500,000	221.6	26.4
Maryland	27,066,000	40,977,000	53,653,000	51.4	34.9
Massachusetts	18,120,300	93,000,000	132,900,000	413.2	42.9
Michigan	55,000,000	90,050,000	123,800,000	63.7	37.6
Minnesota	18,633,000	28,500,000	38,500,000	53.0	35.1
Mississippi	240,000	8,199,100	11,108,700	3,316.3	35.5
Missouri	14,005,200	28,229,400	32,304,000	101.6	14.4
Montana	5,676,300	13,457,300	19,200,500	137.1	42.7
Nebraska	3,472,000	10,326,400	12,336,800	197.4	19.5
Nevada	3,566,000	6,293,000	8,096,000	76.5	28.7
New Hampshire	336,100	1,304,900	1,570,000	288.3	20.3
New Jersey	32,655,900	61,540,800	67,710,000	88.5	10.0
New Mexico	4,500,000	12,661,000	15,442,000	181.5	22.0
New York		196,559,600	227,241,700		15.6
North Carolina	22,555,900	40,821,200	47,000,000	81.0	15.1
North Dakota	670,800	1,591,700	3,500,000	137.3	119.9
Ohio	66,245,800	103,046,600	121,438,600	55.6	17.8
Oklahoma	1,250,000	7,624,600	9,365,000	510.0	22.8
Oregon	3,962,500	5,273,200	6,266,000	33.1	18.8
Pennsylvania	81,403,000	168,000,000	180,000,000	106.4	7.1
Rhode Island	13,500,000	16,500,000	17,500,000	22.2	6.1
South Carolina	10,073,500	19,029,500	31,845,600	88.9	67.3
South Dakota	350,000	350,000	850,000	0	142.9
Tennessee	13,459,000	33,513,900	38,498,000	149.0	14.9
Texas	74,186,400	190,805,000	209,885,000	157.2	10.0
Utah	10,057,300	13,573,300	19,215,000	35.0	41.6
Vermont	2,069,600	3,173,000	3,549,000	53.3	11.7
Virginia	11,107,000	21,328,700	25,990,400	92.0	21.7
Washington	24,383,600	33,283,300	38,400,000	36.5	15.4
West Virginia	2,004,200	4,633,500	4,168,100	31.2	−10.0
Wisconsin	22,282,200	37,311,500	48,833,700	67.5	30.9
Wyoming	743,800	5,000,000	5,080,400	572.2	1.6

Mr. BRADEMAS. Thank you very much, Mr. Brown. Thank you very much all of you gentlemen. My own feeling is that you have done us a great service by throwing the light of your own particular concerns on this legislation which, as I observed earlier, we are only now beginning to implement. I might express an observation or two and put two or three questions and then yield to Mr. Quie as the principal cosponsor on the Republican side of the legislation.

First of all, I do feel I should make the observation that this legislation was not the product of a few months of hasty deliberation but we have been working on it for several years now.

We have tried to anticipate as many of the problems as we would, and I wish that we had heard some of the suggestions you are now bringing during those years of deliberation because we tried to be openminded and willing to have anybody come in and testify.

Second, however, I think we do have a responsibility, which is the reason for these hearings, to listen to affected groups as we do move through the implementation of legislation because I think you want, as you have already all testified, even as do we, to see this legislation work effectively and responsively. I might go further on that point. I think one of our jobs as Members of Congress is to listen to you, to people with other points of view, so that we can encourage the executive branch to make modifications where necessary in carrying out the act and try to work with State educational agencies, local educational agencies and spokesmen for the handicapped in respect to this particular legislation. So we want to be as open as we can to your suggestions.

I have been somewhat struck, I confess, by a certain anomaly at least in my mind and that is that it was almost entirely as a consequence of enactments by State legislatures and by rulings of State courts holding that handicapped children have a constitutional right to an education appropriate to their needs that Congress responded. You are the ones that started all this. We didn't. Pennsylvania is the place where most of it began. It is a little mystifying to me, now that we have tried to respond to your argument that it costs a lot of money to educate handicapped children, and now that we have tried to give you some funds with which to help you meet that burden that we both acknowledge, that you don't seem very happy about it.

Let me ask you this question. I noted, Mr. Flintrop, that you said in the State of Wisconsin that you have a comprehensive special education act which you feel 94-142 was patterned after. Your law is fully as comprehensive, in some cases more so, as the Federal statute. Do I take it that you have a State statutory mandate in the State of Wisconsin to provide special education to handicapped children?

Mr. FLINTROP. Yes; we do, Mr. Chairman. Our law was passed 2 years previous to enactment of the Federal legislation to be implemented fully by July 1, 1976. If we have had problems it is because the State superintendent has not wished to take a statutory role in aggressively seeking compliance with the law.

Mr. BRADEMAS. Have you appropriated enough money to meet that statutory mandate?

Mr. FLINTROP. We have appropriated a sum but it amounts to 70 percent of the cost of local education agencies. We will be moving to an excess cost formula in the next 2 years but at the moment it is categorical aid.

Mr. BRADEMAS. At the moment you are not providing sufficient State funds to meet the needs of educating the handicapped children?

Mr. FLINTROP. Correct. I would have to put that in the light of the fact that we fund generally 40 percent of the cost of primary and secondary education. Our commitment to the special education child is about 40 percent above that level.

Mr. BRADEMAS. I make that point because I am sure that that is replicated elsewhere in the country. I think almost all of the States, with the exception of a few, now have statutory mandates for the education of handicapped children. Do they not, Mr. Hill?

Mr. HILL. Yes.

Mr. BRADEMAS. Yet I think probably it is also fair to say, otherwise we would not be here talking about this legislation, that you haven't had enough money from State and other resources to meet fully the commitment to educate handicapped children which your State articulated in either State statute or court order. Is that not a fair judgment?

Mr. FLINTROP. Mr. Chairman, if I may, I think we have to address the fact that the scene is so different nationally. There are States like Wisconsin where in order to meet the Federal law all it means is that we are going to have to tinker a bit with the procedure for parental complaints to be filed and some other due process changes to be in compliance. In other States though they are an awful long ways from meeting, as a number of people here suggested, meeting the mandates of both their State and Federal law. There are some States similar in size to Wisconsin that are appropriating one-tenth of the amount of State aid that we are. So the needs vary greatly.

While we recognize the need to seek full compliance with both our State and Federal laws some States are in such economic condition right now it is virtually impossible to support the programs to the level which I think they frankly wish they could.

Mr. BRADEMAS. I will make a couple of observations. Congress appropriated $315 million. So when it comes to such statements as yours, Mr. Flintrop, and those that others of you have made, the suggestion that Congress has been falling down on the job, I don't know that that is really a justifiable charge. You also made the statement, Mr. Flintrop, that if we are unable collectively to honor our promises to handicapped people we deserve nothing more than the cynicism and lack of support that plagues government at every level. I have to confess I am not terribly moved by that kind of rhetoric.

We have not tried to promise too much. Indeed, we have tried to help you make good on the promises that you at the State level articulated. I know that several of you have complained that this legislation does not answer all of the needs of educating handicapped children. But this subcommittee also has jurisdiction over the nutrition for the elderly program. I can certainly assert to you with total assurance that we don't appropriate enough money to

meet all of the needs of the elderly for those special nutritional programs. As a consequence we did not then decide to kill the program. I make this point because there is a curious sort of logic that runs through some of this testimony that seems to leave hanging in the air the suggestion that if we don't appropriate enough money fully to meet the needs of this program or some other program, that somehow we are being dishonorable.

Now this subcommittee and other subcommittees of this committee have responsibilities for aid to postsecondary students, colleges and universities, elementary and secondary education and other areas. We don't pretend we are going to be able to solve all of the problems in all of these areas with the passage of legislation in each of these areas. At least I don't pretend that.

You may find it useful to be able to suggest that indeed we have somehow pretended that. But that is your rhetoric. That is not my rhetoric. I am very conservative in the way I represent what we hope to do. We are trying to be helpful to you. There is a sort of theme that runs through this testimony this morning that suggests that we have imposed some unique responsibility upon you when in point of fact you in your own State legislatures have done so. Now I will make one other point and then invite you to respond. I hope all of you will read very carefully the testimony of a subsequent witness, Mr. Weintraub of the Council for Exceptional Children because it is almost an anticipatory response to every one of the points you have made. I do not know what your own consultative arrangements are but I hope very much that even as we want to hear from you and from spokesmen for handicapped children and from local educators, that you will be in touch with them so that you have some sort of colloquy going. I don't know if you have such arrangement to talk with each other but I would encourage it if you don't.

Mr. QUIE. Mr. Chairman.

Mr. BRADEMAS. Mr. Quie.

Mr. QUIE. Mr. Chairman, could I make some comment now so that the witnesses can respond? One of the reasons is that I have a meeting in my office and I have to take care of some other problems on legislation as well.

First, I want to say I commend you for coming in and telling us your concerns. I doubt that we ought to ignore your concerns because I heard them so much. I would like to go through them however. One of the points that you make is that there is not enough money under the authorization. It may be that with the requirements that we are imposing on you that that is not enough money. But look at it from our point of view, and it was an important factor in phasing the authorization up. My concern is that had we gone to $3 billion right away—40 percent is better than $3 billion—the Congress would have thrown up its hands, we can't do this. You don't jump from $350 million to $3 billion. So we tried to do it in progressive steps.

I think that at least for the appropriation for 1978 we were wise in what we did because we brought it from $350 up to $456 million. That is a 47-percent increase which is a pretty good percentage increase. I recognize what we need out there but nevertheless that was a pretty good increase.

As one person who pushed hard on the chairman to make this phased increase so that we could sell it to the Congress I stand ready to increase the authorizations in any of those years until we reach 40 percent if we can get the appropriations out of the Congress. I know that the chairman does as well. So, you do get through to me that there isn't enough money. We are requiring some things that we ought to pay for. The reason I think it is different now is that we do explicitly impose requirements on you. When the first witness indicated that the Department is trying to be a little more easy going, you know, to be substantially in compliance or making progress, as we wrote this legislation we did not expect just substantial progress.

We expected you to get there by that deadline. In that case I do believe we ought to put up additional money and I am ready to go with that.

The part I disagree with, however, is your desire for the duplicated count or the cumulative count. I just can't see that at all. I have gone through it with the veterans where they counted veterans three times and it appears like they are doing a great job but they aren't because when you start counting a person three times, then you have a count that is not accurate. I believe when we deal at the Federal level we have to talk about each individual child even though they have some cumulative problems that you have to face.

Those problems I think you will have to address with the State money although it will be much easier for you if we do bring our share up to what we want to eventually get up to, 40 percent of the average expenditures.

On the individualized plan, people say that is a binding contract. I don't know where they conjured that up because we have made very certain that this is not a binding contract but it is a method for providing the education for the child that he needs and those who are involved including those who are putting up the money, being the State legislatures and the Congress, can then get a better picture of what you are doing. I know what binding contract implies.

There was no intention in the law. If the regulations are written in such a way this becomes a binding contract, then I would like to see you come back to us and I stand ready to make that change so that the law says exactly what we did intend in that regard.

My feeling about your testimony, however, is that again you weren't specific enough on the details of the legal problems that you think you are going to face. Maybe you need to have some experience before you can become more detailed than you already have. I believe that is what we need if we are gong to make amendments.

The last comment I would make is that I don't reject your testimony because you aren't parents or teachers. John Brademas and I are not parents of a handicapped child or teachers but I believe we have responsibility for this legislation. So I accept it from the position where you stand. However, Mr. Weintraub does make, I think, some pretty substantial points on what we were trying to accomplish in the legislature in a way in answer to what you say.

Then in a final statement let me say that we are more explicit than we had been before. We felt, as the chairman has indicated, that when the courts have told you what to do, beginning with Pennsylvania, they did it without any money. They didn't give you dollar one for doing what they told you to do. We now are coming in and also putting a requirement on you but we are going to put up dollars. I think that is the difference between us and the court. We would like to continue to do that. We would like to see some requirements being fulfilled. It is a complicated business when we deal from so far away.

In Minnesota, as some of the testimony will indicate I believe, we don't use that per child in the classroom. We have more support of the services that need to be provided. I believe you can do that easier on the State level than you can devising formulas on the Federal level. So, I recognize that there is some difficulty in matching the two.

I believe that still Public Law 94-142 does about the best job of any legislation we have put together so far. I would like to have more specifics as to any amendments that ought to be made. Thank you.

Mr. BRADEMAS. I appreciate the observations of Mr. Quie. I have to indicate that I don't really disagree with him on any of the points he has made. I also stand ready to vote for more money to meet the problems you have referred to . Perhaps, gentlemen, you wish to make some comments. Will you please identify yourself for the reporter when you respond.

Mr. Hill. I am Warren Hill, Education Commission of the States.

Going back to the point you were making, Mr. Chairman, about the States having laws, I would like to quote from Mr. Boyer's testimony before your committee on this point and then quote from our legal counsel's comment about that. Mr. Boyer stated:

> Although we favor Federal roles for programing for handicapped children, we recognize that 48 of the 50 States already have statutes providing for the education of handicapped children and court decisions have uniformly found that States must provide education for the handicapped children on an equitable basis. We feel, therefore, that the funding under the Federal statute must be seen as assisting the States with their current responsibilities and not imposing a totally new Federal fiscal or programmatic burden.

The comment from the counsel, and Mr. Flemming is here:

> The extent to which the requirement of Public Law 94-142 duplicates existing obligation under State law is a major issue. There are a number of States which have limitations on the State payment for private school tuition, some which have no special education statutes at all, and some State constitutions limit commitment of future State appropriation (and thereby limit the ability of the State to stipulate in concrete legal terms that services can be provided).

Mr. Chairman, there is a problem we think here in bringing these two together. The State laws and Federal laws are not identical.

Mr. BROUILLET. I have two comments, Mr. Chairman. I agree that money is not the only problem. I think one of our concerns, as Mr. Hill indicated, was that everybody gets treated the same. In the State of Washington, for example, the amount of Federal money we get is not greatly significant with the amount of effort we are making. We have an excess cost program that runs $50 million a year in our small State. Some legislators have said to us

because of the proscription of the law we ought to take Federal money because it compounds the problem. We run into problems on this bill in the State of Washington of supplanting because we are almost a full service State. I guess the point I am making is that everyone is a little bit different and when we put everyone in the same category it causes problems.

Second, I was not talking about more massive money. I was talking about implementation, period. It took several years in our State to get where we are now. We passed the law in 1971 and as I look back in regard to the other States I don't see how they can get there in 2 years without more help from the Federal Government. I was not talking about massive support. I was talking about the timetable, implementation does not fit with the timetable of appropriations.

Mr. BRADEMAS. I understand that. I appreciate that.

Mr. FLINTROP. Mr. Chairman, I would have to admit that I would have been a bit disappointed had you not caught me in my own testimony because oftentimes when I am sitting on your side of the table I am facing local officials who complain about mandates that we have foisted upon them at the local level. Clearly we appreciate any assistance we can get because especially in Wisconsin we were making the commitment at any rate. I think the point that was mentioned earlier, that some States, because they either did not have a local initiative in the statutes or else they were under no direct court mandate, simply did not have the opportunity to phase in.

Congressman Quie mentioned that it would have been difficult to sell it to your colleagues had you wanted to come in with a full $3 billion appropriation in one shot. Yet when there is a Federal mandate we don't have an option to sell that appropriation. In some States it is just a simple question of economics. They can't find the bucks right now.

Mr. BRADEMAS. Thank you very much.

Mr. Kildee.

Mr. KILDEE. Just a brief observation, Mr. Chairman and perhaps a question.

I think we are all talking about some of the same problems we incur in programs which we recognize as needy programs. I was cosponsor of Public Act 198 in Michigan which set up one of the early mandated programs of special education from age 0 to 25.

I am wondering, did the majority of those who voted for mandatory special education in Wisconsin also vote to raise the additional revenue?

Mr. FLINTROP. We had the good fortune of passing legislation at a time when we had some budget surplus. So we were able to do so and put $70 million in the first full year of implementation of State funds in the program without having to raise additional revenue. If that same legislation were before us today, however, we would not have that luxury.

Mr. KILDEE. There is a problem. I voted for the mandatory special education. I voted for the first income tax and I voted for the second income tax and for the third income tax.

Mr. FLINTROP. You are to be congratulated.

Mr. KILDEE. I really feel that we are trying to assist the States. The chairman is one of the pioneers in this whole area trying to assist those children who have physical or mental handicaps, but I do become a little weary of particularly those in any legislative body, and I saw it in my own body in the Michigan legislature, who vote for all the good programs and have a perfect legislative record. One person was there 26 years.

That person voted for every program for the handicapped, the senior citizens, for labor, mental health; that member had a perfect record, voting against every tax bill, and that is irresponsible.

That is all, Mr. Chairman.

Mr. BRADEMAS. Mr. Jeffords.

Mr. JEFFORDS. Thank you, Mr. Chairman. First, I would like to make a couple of comments. I arrived here after 94-142 was passed, and I accept the situation as I find it. The history is interesting. I tend to agree with the speakers today that we have to take a look at the financial situation and understand it in the context of existing circumstances. Therefore I am one for increasing funding. I also think the situation has changed somewhat with the 504 regulations. You have the carrot approach with 94-142, and you have the stick approach with 504, which will increase the requirements for funding and mandate the acceptance of 94-142. I think that changes the rules of the game.

I want you to know there is support among some of us who know the history of this.

I would like to ask for some specific information. I, and Mr. Miller who was here, have a concern about the due process requirements and the comments on the due process requirements. I have heard criticism but I have not seen anything specific regarding what problems exist with the law. Is it that there are better provisions in some States, or is there just too much confusion? What, specifically, are some of the problems? I know there are some general comments.

Mr. BROUILLET. I can make some general comment about that. We have in our State law an elaborate due process procedure, appeals, and you go to a local district, if it is not appropriate you can go on and on until it finally gets to the State superintendent who makes the determination, unfortunately. We are going to have to scrap that. We worked this out with the consumers groups, the education of the handicapped people in the State. Our concern in that respect is that we are now going to scrap something that we worked out, that is very good, for another process.

Now that we disagree with due process because we have it. We think it is good and it is pretty much agreed to by everybody in the State. Now we are going to change it because Federal legislation requires us to have another kind of due process.

Mr. BROWN. Mr. Jeffords, again it is the specificity that is involved in the due process. The requirement that the appeal, final appeal, be held at the SEA level is something that can't be done across all States according to the way their due process appeals are set up now. Nebraska, for example, has a final appeal that is done by an independent board, special education appeal board, which hears these final appeals as they come up through the process. It is not a part of the SEA.

There were some familiar problems in Florida. I am not sure whether those are resolved yet or not. It is the specificity that gets right down to saying there is one unique system of due process. The Supreme Court over and over again has recognized that due process has no format. It varies with whatever context is applicable.

Mr. BRADEMAS. I appreciate that. I hear I have to go to another meeting but I just want to take this opportunity to express my very warm appreciation to members of the panel for having come, and apologize to the members of the subsequent panel for having missed them.

People have asked me what I think Congress is going to do in the field of education legislation in the next couple of years and I have responded that I don't really think, just speaking for myself, that we are likely to pass any major new authorizing bills but rather we should focus on, one, getting enough money effectively to implement the laws we have already passed and, two, that we ought to work as closely as we can with local school authorities, with State educational authorities and with others so that we can try to carry out responsibly and effectively, as I said earlier, the laws that we have written.

I think that the Education for all Handicapped Children Act is a good example of what we ought to be doing in both respects and your testimony this morning has been very helpful in both those directions. I am anxious that we work together to make these laws work for the young people whom they are intended to serve.

I want to thank all of you for having come. I thank my colleague for yielding.

Mr. BENTON. Mr. Chairman, I would want to make this point. I think it would be a misnomer if we, who are appearing on this panel, would appear to be adversative to those appearing on the second panel. It seems to me we are in the same boat here. I would regret very much if those of us what have raised very specific questions and those of us who have to implement this are cast in the role of being the baddies. I would not want that. I have no idea what will be testified to here later. My guess is that we are going to be much closer together than we are apart. We have raised some questions, we thought that was our purpose.

We are not necessarily saying the legislation is bad. We have tried to raise some real pertinent questions for the administration.

Mr. BRADEMAS. I think that is a helpful statement, Mr. Benton. I agree with it and applaud it. Thank you.

Mr. JEFFORDS. Let me follow up my previous line of questioning and ask whether the situation is such that we should consider amending those provisions. Should we provide some leeway for the Secretary to approve other due process systems which substantially comply with the intent of the law? Is that what you are looking for?

Mr. BENTON. Again I would concur with that. It seems to me in a lot of Federal legislation if you are going to recognize that there are differences among the States and they are there, both statutory and various other types of things, that a procedure that might be followed here would be that in the approval of a State plan, that if indeed there is a State due process procedure similar to what Mr.

Brouillet has talked about, we would have one in the State of Iowa, if that were part of the State plan, that the U.S. office would then be able to say that does substantially fulfill the requirement of due process, we would accept that as part of the State approach rather than one plan that is going to be just totally imposed on all the 50 States and the 6 territories.

Mr. JEFFORDS. One of the concerns we had in being so specific was the problem a family faced in going through one total process of appeal, and then finding it necessary to go to court and duplicate all the evidence. That is part of the reason for the specificity. One thing I want to be sure of before we make any changes, is that that duplication of evidence and expense would also be prevented by State due process laws. I just wanted to tell you that. Before I recommend that we amend the law I would have to be reassured that would be the case. We have to prevent that kind of additional expense which you find when you have one due process situation, and then have to move to the courts to repeat the evidence.

Mr. BROUILLET. I think that would certainly be proper. Those are the kinds of things we would not want to do except we would argue for less specificity and some kind of flexibility. In our State it is a very simple process. There is no cost to those appealing and so forth. We agree with you that we would want to safeguard those things and not make it financially burdensome to those people.

Mr. JEFFORDS. The last question deals with the understanding of IEP, with respect to its binding nature. I notice we have received testimony from the children's defense fund that the IEP must be considered as binding and serve as a contract, whereas the other view is that it is a plan to help proceed with the goal of providing appropriate education, and not that it is a binding document or a contract to be enforced in the courts. I wonder if you have any views on that, regarding whether that is a problem which is presently afflicting the States? Is it a real problem now?

Mr. BENTON. I think the fact is that all of us have testified that it is indeed a problem and concern. Representative Quie indicated to us that at least on the Federal level they did not view it, at least Congress did not view it, as being a legally binding contractual document which would indicate that that is a real concern. I testified to this in my testimony. It seems to me if this was indeed the intent of Congress then there should not be a real problem in putting that little sentence into law that indeed it is not that and be done with it.

Obviously there is a difference of opinion. I don't think in education you can absolutely guarantee the progress of any student. That is part of the issue here. A plan, yes, you can plan. The very best intentions in the world can be placed in that plan but at the end of a given point in time that a child is going to achieve at a certain level is not certain. This is the content of several of the court suits that I understand are being instituted, if not in special education areas at least in some of the other areas.

Mr. JEFFORDS. Thank you.

Mr. KILDEE [presiding]. Mr. Pressler.

Mr. PRESSLER. Mr. Chairman, I would like to ask a question about the priorities that this group would have. If we were to appropriate $1 billion tomorrow in this Congress, what would be

the priorities? What would be your top two or three priorities of specific things you would do that you are not now doing?

Mr. BENTON. We have chosen in our State plan, for example, to pinpoint preschool programs for the handicapped even though there is a provision perhaps in State law that there is one area that has not been implemented in our State. We thought under this plan, and I think it has been accepted in principle by BEH, that we would place our dollars there and there are several other priorities. Now the point does come that once you address those priorities, and you are able to follow these dollars into the total amount that is being spent at the State level, it seems to me that is a rather important concept. Last year we put up 30 State dollars in excess cost for every Federal dollar.

Our local districts did the same thing. This year, 1977-1978, we project that the State will be spending about $25.5 per pupil. The locals will be doing the same thing. In effect the State of Iowa and school districts are spending $51 for every $1 coming into the State in Federal funds along this particular way. It seems to us that when you reach that kind of commitment that surely the Federal dollar should be able to be folded in without much question and that is what we are after. You ask what priority in States that are further down the road you don't have near the ability to set priorities that States have that are just beginning.

Mr. BROUILLET. I think there is no question States would first serve the unserved. Then you get that terminology in the law which talks about underserved. I think one of the things that we talked about, several people testified to, is the problem of teacher training development. You talk about least restrictive environment which means you are going to put those young people back in the classroom. I don't know of a State in the Nation who is doing an outstanding job of getting the regular classroom teacher ready for what we call mainstreaming. That is going to be a very difficult thing. I think that is one of the great needs.

We are only talking about handicapped children education at this point in time.

Mr. FLINTROP. I would have to stay that the position of Wisconsin would be different than the position I think of the State legislatures generally. In Wisconsin for us we would like to be able to go beyond the range of the law. We would like to be able to develop programs for the zero to 3-year-old child because many studies have shown that a dollar is better spent there for some disability than after age 3.

For the State as a whole though because of the gap between the services that are needed and the quality of staff that is available I think teacher training has to be a top priority.

Mr. BROWN. I am not representing any particular State but rather a majority of the States. I would have to say that the issue of personal preparation, as was addressed previously, plus the additional consideration of vocational programs for handicapped, the secondary handicapped, which have been left to drop out of school and thus the problems have been handled that way.

I think it is about time that we have some additional emphasis put on vocational programs, prevocational programs, that can deal with those difficulties.

Mr. PRESSLER. I am a strong supporter of these programs. I am wondering if the things that have been mentioned, such as teacher training, and preschool programs would cost $3 billion. It depends on who pays for it, the State government, or local government. In terms of the proposals that we have, are we being specific enough is a question that comes to my mind in terms of some of the hard priorities and budgetary decisions we have to make here. I guess we are all for increased assistance to the handicapped, and I am. However, I have been groping for a little more hard information as to where this money would go. Maybe somebody has more of a comment or response. If not, thank you, Mr. Chairman.

Mr. KILDEE. Mr. Jeffords.

Mr. JEFFORDS. I want to get back to the IEP's and try to understand what you conceive them to be. What I would like to do is raise this question. Let's say you have an agreement with the parents on an IEP and it goes forward, but then the school decides to change it. The school says, "It wasn't working well, so we are going to go to another one," but the family says, "No, we think that is the way to go" and they bring a suit or an action or want a hearing on it. How do you view the IEP at that point? What did it stand for? Was it merely some evidence of what the most appropriate education would be, or was it an understanding or agreement? How do you view it?

Mr. BENTON. I would personaly view it as a plan. You can't guarantee that something you plan is absolutely going to be carried out to the full extent. You always have the problem of parents not agreeing totally with what the schools are doing with their children.

I guess you have to stay with the concept that the responsibility by law is placed with the local education agency and given proper backup or proper planning here I think you have to cast your lot with the school in terms of what they are proposing to do. Now what the legal implications are I don't really know.

That is part of the issue here.

Mr. JEFFORDS. That is the trouble, it is the issue.

Mr. BENTON. I have a lot of appeals too. You have to make a decision when an appeal is brought before you. Has there been adequate background? Has there been adequate evaluation? Many times you have to make a subjective judgment of which way is best.

I think the schools are going to be faced with it. I think the concern that we really have is that this thing can be dragged out for months on end in terms of this type of thing. In the process, the whole progress and program may come to a halt during this particular process.

Mr. BROUILLET. I generally agree with Mr. Benton that we look on this as a plan. This is why we have the appeal process. I guess in the State of Washington where we have 50,000 or 60,000 students in the handicapped program I get very few appeals. If you have a procedure worked out and due process and involvement with the parents, you get very few appeals at the State level. I probably handled 8 or 10 last year. So it is not a big problem from an appeal procedure. I guess what concerns us is that there will be some kind of class action some time, that some court will find that this is a contract and then we will have a lot of problems.

Mr. JEFFORDS. How should the court look at it? You say it is a plan but what does that mean? Is it merely evidence of what somebody, at some point, defined as appropriate education?

Mr. BROUILLET. In our State we go through an elaborate evaluation procedure, psychologists, these kinds of things, get the plan developed, evaluate the student, meet with the parents. The parents have to sign off in our State. This has been since 1971.

Mr. JEFFORDS. I am talking of a situation where they signed off but the school does not live up to it or changes its mind. Then what does the court do?

Mr. BROUILLET. In our State they can't change their mind unless the parent signs it.

Mr. JEFFORDS. You reach an impasse and they refuse to sign?

Mr. BROUILLET. Then they go through the appeals process.

Mr. JEFFORDS. Do you have to follow the plan then?

Mr. BROUILLET. If you are talking to me specifically, I would, as a State superintendent, have to look at the evidence of what was done, how it was arrived at, the appeal procedure. I could not say in every case you would have to. Maybe the present dominance of evidence from our objective viewpoint is that that is the best program for the child because I am the final judge in this situation.

I can't say in every case. Sometimes I have told the districts they have to change the plan and do that. So I guess it depends on the set of facts and the circumstances but relying also very heavily on people to assist the psychologists and the others in the system to help out and evaluate this person.

Mr. JEFFORDS. Thank you.

Mr. FLINTROP. Mr. Chairman and Mr. Jeffords, if I may, the real problem is on whom should the burden of proof rest? In Wisconsin, we had previously, under State law, a system whereby once a child was placed with final approval in an appropriate program the only way the child could be removed from the program and mainstreamed 100 percent is with a parental concurrence.

The problem developed that some parents objected to the process and we could not get the kids back from the regular classroom where their best educational needs would be met. There was no appeal process for the school system. Now we have changed the law so that the burden of proof at the time that a child is going to be mainstreamed is on the parent and the child is placed in the regular classroom and then the appeals process begins if the parents wish to appeal.

Anyway you go you are going to have some situations in which appeals are encouraged because of the design of the appeal process. A parent who is very eager to see their kids needs met might appeal the decision of a local agency to move a child out of a program. On the other hand, a school district should they be forced to continue to provide special education needs for their child who in their judgment no longer needs it, there is no easy solution. In Wisconsin we have come to feel more comfortable with the Federal interpretation of that being a broad plan rather than a specific contract. The State superintendent as well as the LEA's are more comfortable following the seminars held across the States on the IEP's than we were this spring.

Mr. JEFFORDS. I am troubled by both approaches. Thank you.

Mr. KILDEE. If there are no further questions the Chair would like to thank the panel for a very good presentation and very fruitful exchange. Thank you.

Mr. FLINTROP. Thank you.

Mr. KILDEE. At this point the Chair will exercise its prerogative and change the order a bit and ask the Honorable Elaine Bloom, chairperson of Florida House of Representatives of the Federal-State Appropriations Committee to please come forth for testimony.

STATEMENT OF REPRESENTATIVE ELAINE BLOOM, CHAIRPERSON FEDERAL-STATE APPROPRIATIONS COMMITTEE, HOUSE OF REPRESENTATIVES, STATE OF FLORIDA

Ms. BLOOM. Thank you, Mr. Chairman. I feel deserted here. Actually I could have sat with this panel although I had not expected to be able to get to Washington in time to join them for the beginning of their turn here at the microphone.

In line with what Representative Quie said earlier this morning, I will be prepared to make some specific recommendations for a very minor amendment.

First: Let me thank you for the opportunity to testify about the Education of All Handicapped Children Act of 1975. I do chair the Federal-State Appropriation Committee of the Florida House of Representatives and in that capacity we began a very thorough analysis of how this particular piece of landmark legislation would impact on the State of Florida. Providing the best education that we can for our handicapped children is an issue that concerns all of us and the involvement of State legislatures with you now as you examine this law fortifies the partnership approach of Federal-State relations necessary to benefit our mutual constituency. I have long supported Florida's handicapped education program which is among the finest and most comprehensive in the Nation, both as a full-time community volunteer and with over a decade of active service in the pioneering organizations in this field and also through my action in the Education and Appropriations Committees of the Florida House.

I commend you, Mr. Chairman, and members of the subcommittee for the concern for the special needs of handicapped children that is manifested in this act. I also wish to express my support for the concept of Federal aid to programs for handicapped children. Although I do not intend to discuss money or funding levels by way of this testimony, we do believe that Federal aid to help educate handicapped children is an appropriate use of our Federal tax dollars. But we also believe that determining how the handicapped children in Florida are served is properly a State responsibility. Thus, I wish to address provisions in the Education for All Handicapped Children Act that are incompatible with Florida's constitution, laws, and policies; to talk about problems we have faced; and to ask you an important overriding question: Is your real goal to assure that States provide quality educational programs for all children, or to design a uniform, national delivery system for services to the handicapped at the Federal level?

Some of the conflicts between the precise language of the Education for All Handicapped Children Act and Florida's constitution

are identical to the conflicts faced by other States and we believe worthy of your serious consideration, particularly because minor amendments may be all that is needed for their resolution. I urge consideration of one such set of minor amendments, adding five words in one paragraph and 10 words in the next, which would resolve the conflicts.

The most obvious and serious conflict involves the due process requirements mandated by Public Law 94-142, and those authorized by Florida statute through the Administrative Procedures Act. If I can send these up to you, you will be able to concentrate on them when I do get to them.

Mr. KILDEE. We will make that part of the record.

[The material to be furnished by Ms. Bloom follows:]

FLORIDA CONSTITUTIONAL AND STATUTORY CONFLICTS* WITH THE EDUCATION FOR ALL HANDICAPPED CHILDREN ACT (P.L. 94-142)

CONFLICTING REQUIREMENT	EXPLANATION OF CONFLICT	CONFLICTING STATE LEGAL AUTHORITY	SUGGESTED REMEDY
P.L. 94-142 requires administrative procedures from the LEA to the SEA before recourse to the courts.	The Florida Administrative Procedures Act does not provide for an appeal of a local school board's decision to the State Educational Authority. Such a procedure is considered excessively costly and time consuming to the parent. The Act provides for an informal hearing first, then a formal hearing, then recourse to the courts.	Chapter 120, Florida Statutes. (Attachment #1)	The language of P.L. 94-142 should provide generic requirements for adequate due process procedures. **See Alternates (1) and (2) attached
P.L. 94-142 requires the SEA to provide direct educational services to handicapped children when LEAs refuse to participate in handicapped programs or fail to adequately serve handicapped children.	The Florida Constitution and subsequent clarifying law provides that the Florida Board of Education (SEA) has only policy-making authority and it is the local school boards (LEA) which shall operate, control and supervise education programs, including programs for exceptional children, in the school district.	Sections 2 and 4, Art. IX, Fla. Const. (Attachment #2) Section 229.053, Florida Statutes (Attachment #3) Section 230.03, Florida Statutes, (Attachment #4) Section 230.23(4)(n)1, Florida Statutes (Attachment #5)	The language of P.L. 94-142 should recognize the wide range of relationships which exist between SEAs and LEAs. Some SEAs which have direct statutory control over LEAs have, as a practical matter, little or no functional control over them.

51

* Other conflicts that had been suggested in the past seem to have been resolved after discussion and review with H.E.W.

7/29/77

** Two alternatives are suggested under 20USC 1415, P.L.94-142, sec.615.

"(*l*) Notwithstanding the provisions of subsection (a)(2)(B)(ii), any local educational agency which is required to carry out any program for the education of handicapped children pursuant to a State law shall be entitled to receive payments under section 611(d) for use in carrying out such program, except that such payments may not be used to reduce the level of expenditures for such program made by such local educational agency from State or local funds below the level of such expenditures for the fiscal year prior to the fiscal year for which such local educational agency seeks such payments.

"PROCEDURAL SAFEGUARDS

SC 1415. "SEC. 615. (a) Any State educational agency, any local educational agency, and any intermediate educational unit which receives assistance under this part shall establish and maintain procedures in accordance with subsection (b) through subsection (e) of this section to assure that handicapped children and their parents or guardians are guaranteed procedural safeguards with respect to the provision of free appropriate public education by such agencies and units.

"(b)(1) The procedures required by this section shall include, but shall not be limited to—

"(A) an opportunity for the parents or guardian of a handicapped child to examine all relevant records with respect to the identification, evaluation, and educational placement of the child, and the provision of a free appropriate public education to such child, and to obtain an independent educational evaluation of the child;

"(B) procedures to protect the rights of the child whenever the parents or guardian of the child are not known, unavailable, or the child is a ward of the State, including the assignment of an individual (who shall not be an employee of the State educational agency, local educational agency, or intermediate educational unit involved in the education or care of the child) to act as a surrogate for the parents or guardian;

"(C) written prior notice to the parents or guardian of the child whenever such agency or unit—

"(i) proposes to initiate or change, or

"(ii) refuses to initiate or change,

the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child;

"(D) procedures designed to assure that the notice required by clause (C) fully inform the parents or guardian, in the parents' or guardian's native language, unless it clearly is not feasible to do so, of all procedures available pursuant to this section; and

"(E) an opportunity to present complaints with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child.

"(2) Whenever a complaint has been received under paragraph (1) of this subsection, the parents or guardian shall have an opportunity for an impartial due process hearing which shall be conducted by the State educational agency or by the local educational agency or intermediate educational unit as determined by State law or by the State educational agency. No hearing conducted pursuant to the requirements of this paragraph shall be conducted by an employee of such agency or unit involved in the education or care of the child.

or appropriate administrative hearing agency

or appropriate state appeal agency as determined by state law

(ALTERNATE 1)

Appeal to SEA

"(c) If the hearing required in paragraph (2) of subsection (b) of this section is conducted by a local educational agency or an intermediate educational unit, any party aggrieved by the findings and decision rendered in such a hearing may appeal to the State educational agency which shall conduct an impartial review of such hearing. The officer conducting such review shall make an independent decision upon completion of such review.

Currently - no appeal to the state within state laws

"(d) Any party to any hearing conducted pursuant to subsections (b) and (c) shall be accorded (1) the right to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of handicapped children, (2) the right to present evidence and confront, cross-examine, and compel the attendance of witnesses, (3) the right to a written or electronic verbatim record of such hearing, and (4) the right to written findings of fact and decisions (which findings and decisions shall also be transmitted to the advisory panel established pursuant to section 613(a)(12)).

Final decision

"(e)(1) A decision made in a hearing conducted pursuant to paragraph (2) of subsection (b) shall be final, except that any party involved in such hearing may appeal such decision under the provisions of subsection (c) and paragraph (2) of this subsection. A decision made under subsection (c) shall be final, except that any party may bring an action under paragraph (2) of this subsection.

Civil action.

"(2) Any party aggrieved by the findings and decision made under subsection (b) who does not have the right to an appeal under subsection (c), and any party aggrieved by the findings and decision under subsection (c), shall have the right to bring a civil action with respect to the complaint presented pursuant to this section, which action may be brought in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy. In any action brought under this paragraph the court shall receive the records of the administrative proceedings, shall hear additional evidence at the request of a party, and, basing its decision on the preponderance of the evidence, shall grant such relief as the court determines is appropriate.

"(3) During the pendency of any proceedings conducted pursuant to this section, unless the State or local educational agency and the parents or guardian otherwise agree, the child shall remain in the then current educational placement of such child, or, if applying for initial admission to a public school, shall, with the consent of the parents or guardian, be placed in the public school program until all such proceedings have been completed.

District courts jurisdiction.

"(4) The district courts of the United States shall have jurisdiction of actions brought under this subsection without regard to the amount in controversy.

"WITHHOLDING AND JUDICIAL REVIEW

Notice, hearing. 20 USC 1416.

"SEC. 616. (a) Whenever the Commissioner, after reasonable notice and opportunity for hearing to the State educational agency involved (and to any local educational agency or intermediate educational unit affected by any failure described in clause (2)), finds—

"(1) that there has been a failure to comply substantially with any provision of section 612 or section 613, or

"(f) Notwithstanding the provisions of subsection (a)(2)(B)(ii), any local educational agency which is required to carry out any program for the education of handicapped children pursuant to a State law shall be entitled to receive payments under section 611(d) for use in carrying out such program, except that such payments may not be used to reduce the level of expenditures for such program made by such local educational agency from State or local funds below the level of such expenditures for the fiscal year prior to the fiscal year for which such local educational agency seeks such payments.

"PROCEDURAL SAFEGUARDS

SC 1415. "SEC. 615. (a) Any State educational agency, any local educational agency, and any intermediate educational unit which receives assistance under this part shall establish and maintain procedures in accordance with subsection (b) through subsection (e) of this section to assure that handicapped children and their parents or guardians are guaranteed procedural safeguards with respect to the provision of free appropriate public education by such agencies and units.

"(b)(1) The procedures required by this section shall include, but shall not be limited to—

"(A) an opportunity for the parents or guardian of a handicapped child to examine all relevant records with respect to the identification, evaluation, and educational placement of the child, and the provision of a free appropriate public education to such child, and to obtain an independent educational evaluation of the child;

"(B) procedures to protect the rights of the child whenever the parents or guardian of the child are not known, unavailable, or the child is a ward of the State, including the assignment of an individual (who shall not be an employee of the State educational agency, local educational agency, or intermediate educational unit involved in the education or care of the child) to act as a surrogate for the parents or guardian;

"(C) written prior notice to the parents or guardian of the child whenever such agency or unit—

"(i) proposes to initiate or change, or

"(ii) refuses to initiate or change,

the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child;

"(D) procedures designed to assure that the notice required by clause (C) fully inform the parents or guardian, in the parents' or guardian's native language, unless it clearly is not feasible to do so, of all procedures available pursuant to this section; and

"(E) an opportunity to present complaints with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child.

"(2) Whenever a complaint has been received under paragraph (1) of this subsection, the parents or guardian shall have an opportunity for an impartial due process hearing which shall be conducted by the State educational agency or by the local educational agency or intermediate educational unit as determined by State law, ~~or by the State educational agency~~. No hearing conducted pursuant to the requirements of this paragraph shall be conducted by an employee of such agency or unit involved in the education or care of the child.

or appropriate State appeal agency as determined by state law

ALTERNATE 2

Appeal to SEA

"(3) If the hearing required in paragraph (2) of subsection (b) of this section is conducted by a local educational agency or an intermediate educational unit, any party aggrieved by the findings and decision rendered in such a hearing may appeal to the State educational agency which shall conduct an impartial review of such hearing. The officer conducting such review shall make an independent decision upon completion of such review.

Currently - no appeal to the State within State law

"(d) Any party to any hearing conducted pursuant to subsections (b) and (c) shall be accorded (1) the right to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of handicapped children, (2) the right to present evidence and confront, cross-examine, and compel the attendance of witnesses, (3) the right to a written or electronic verbatim record of such hearing, and (4) the right to written findings of fact and decisions (which findings and decisions shall also be transmitted to the advisory panel established pursuant to section 613(a)(12)).

Final decision

"(e)(1) A decision made in a hearing conducted pursuant to paragraph (2) of subsection (b) shall be final, except that any party involved in such hearing may appeal such decision under the provisions of subsection (c) and paragraph (2) of this subsection. A decision made under subsection (c) shall be final, except that any party may bring an action under paragraph (2) of this subsection.

Civil action.

"(2) Any party aggrieved by the findings and decision made under subsection (b) who does not have the right to an appeal under subsection (c), and any party aggrieved by the findings and decision under subsection (c), shall have the right to bring a civil action with respect to the complaint presented pursuant to this section, which action may be brought in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy. In any action brought under this paragraph the court shall receive the records of the administrative proceedings, shall hear additional evidence at the request of a party, and, basing its decision on the preponderance of the evidence, shall grant such relief as the court determines is appropriate.

"(3) During the pendency of any proceedings conducted pursuant to this section, unless the State or local educational agency and the parents or guardian otherwise agree, the child shall remain in the then current educational placement of such child, or, if applying for initial admission to a public school, shall, with the consent of the parents or guardian, be placed in the public school program until all such proceedings have been completed.

District courts jurisdiction.

"(4) The district courts of the United States shall have jurisdiction of actions brought under this subsection without regard to the amount in controversy.

"WITHHOLDING AND JUDICIAL REVIEW

Notice, hearing. 20 USC 1416.

"SEC. 616. (a) Whenever the Commissioner, after reasonable notice and opportunity for hearing to the State educational agency involved (and to any local educational agency or intermediate educational unit affected by any failure described in clause (2)), finds—

"(1) that there has been a failure to comply substantially with any provision of section 612 or section 613, or

Both procedures protect the rights of handicapped children and their parents, and both procedures afford due process through a system of appeals. But, Public Law 94-142 requires direct appeals to the State education agency from the school district. The Florida Administrative Procedures Act instead authorizes direct appeals from local school board decisions to the State division of administrative hearings where the validity of a rule or procedure is questionable, wherein the decision of the administrative hearing officer is final.

If a substantive right is affected, and the rules under which the LEA is operating are valid, an appeal may be made to a court of competent jurisdiction. We maintain that both of these procedures assure that due process requirements in protecting the rights of handicapped children and their parents will be met, and that therefore, Public Law 94-142 should recognize State laws which establish adequate due process requirements.

I would like to turn your attention to page 2 of this handout and show you alternative 1 which inserts in section 615(a)(2) right at the bottom of the page, where it says, "The due process hearing shall be conducted by the State education agency or local education agency," and insert there "or appropriate administrative hearing agency," or the next alternative before that page simply insert the word "or" which would say "or as determined by State law or by the State education agency." We can solve the problem faced by those States that have any place equitable due proceedings which in fact, sir, I would submit to you are far more worthy of being considered totally tolerant of all points of view because they are not related to any educational authority but are simply impartial administrative hearing officers.

Then in paragraph "C" on the top of the next page as you will see you will just add where it says:

> In such a hearing may appeal to the State education agency or appropriate State appeal agency as determined by State law and thereby be able to accomplish the same goals of assuring due process for the children affected, parents affected and all parties involved in the most impartial hearing mechanisms available.

Another potential conflict may involve the supervision and control of educational programs for handicapped children. Public Law 94-142 requires:

> That all educational programs for handicapped children within the State, including all such programs administered by any other State or local agency, will be under the general supervision of the persons responsible for educational programs for handicapped children in the state educational agency . . .

If this involves directly "supervising" instruction for handicapped children in Florida public schools, then this provision may conflict in part with existing Florida constitutional language.

I believe some of the people have touched on this. Let me just say this is part of the same issue of whether general means something more specific than that kind of supervision which generally is provided by the State educational agency under its own constitutional authority. These and other conflicts as well between the language and implications of Public Law 94-142 and State laws and regulations and constitutional provisions are significant because they reflect an implication that the Federal Governement is somehow inherently better qualified to determine which program

management and administrative procedures are best designed to insure that handicapped education programs throughout a given State are administered equitably.

We believe that substantial compliance with the goals and intent of Federal legislation should be the criterion for state and local participation in federally funded educational programs.

As you well know, the tenth amendment of the United States Constitution reserves to the States or to the people the powers not enumerated or implied as powers of the Federal Government. Educational governance is not among those powers delegated to the Federal Government by the Constitution. Furthermore, judicial precedents indicate that education is a fundamental, State responsibility, and that the Federal Government cannot interfere with the sovereign power of the State (and their political subdivisions) to make the decisions which determine the integral government functions of these bodies. *National League of Cities* v. *Usery*, 1976. Nor is education among the rights afforded explicit or implicit protection under the U.S. Constitution. *San Antonio School District* v. *Rodriquez*, 1973.

Florida operates an exemplary handicapped education program that is among the finest in the country. Moreover, Federal aid to handicapped students represents today less than 3 percent of the total funds spent by Florida for these programs. Under State law, 80 percent of the program dollars generated by handicapped programs in the State must be spent directly on those programs. Perhaps, some other States are not doing as much—although many are—but that still does not justify the Federal Government imposing its standards and regulations on States such as Florida, which are doing an excellent job and had fine programs in place even before the Federal legislation was passed.

Federal rules and regulations to implement Public Law 94-142 are excessive on their face. They are even more unreasonable in light of the small Federal contribution that is being made. As you, Mr. Chairman, and many members of the subcommittee are aware, serious efforts have already been made to cut handicapped funding at the Federal level for fiscal year 1978 appropriations. Educational programs are traditionally funded below authorized levels, and we see little reason to believe that this pattern will change.

We are confident, however, that Florida's handicapped education program coals are compatible and "substantially comply" with the basic goals and objectives of Public Law 94-142—to provide an appropriate free education for all handicapped children. We are also certain that an evaluation or "performance audit" of our State handicapped program would reveal much greater compliance with Federal goals, than with arbitrary Federal requirements that conflict with the letter of Florida's Constitution and law—which is the real purpose of this important law.

To conclude this testimony, we'd like to suggest, for the subcommittee's consideration, some possible changes in Public Law 94-142 which we believe maintain the basic thrust of the act, and improve its compatibility with State and local laws.

First, the Congress should establish broad goals and standards that would allow the States to administer programs in education,

consistent with State constitutional and legal requirements, that are properly the responsibilities of each State.

Second, the Congress should adopt an overall approach to Federal funding of educational programs that recognizes and respects the authority of each State to operate independently its own State system of public education according to its Constitution and statutes.

Third, the Congress should provide for greater discretion and flexibility in administering special or handicapped education programs at the State and local levels, consistent with broad program goals enunciated for the Nation.

Fourth, the Congress should include as part of the Education for All Handicapped Children Act, an intrastate funding formula that would permit States with exemplary handicapped education programs and State Finance plans to "equalize" handicapped education expenditures among school districts. Perhaps the Congress could use as its criteria to evaluate State finance plans a "test" similar to the one used in determining the effectiveness of State plans for Federal impact aid, authorized by Public Law 93-380.

Fifth, the Congress should authorize, by amending the act, a method of counting handicapped children which reflects the scope of special education and related services that are actually provided. In other words, don't penalize States by undercounting the number of handicapped children and their handicaps that should actually be served.

Rather look at this as duplication of counting we know on the State level it is our responsibility to give a weighted program factor to every single different educational program for the handicapped and what we are suggesting to you is that this same system of weighting the cost of educating these children be utilized in counting the number of children served.

Sixth, although I promised not to discuss money in my opening remarks, I do believe that the Congress should make every effort to fully fund Federal handicapped programs. Public Law 94-142 is a very critical and important Federal program, and in light of the impact tht it will have on many of the States who choose to participate in it, the Congress should appropriate all the funds authorized by the act.

I wish to state that Florida does not consider it is in that situation. We have made the 100 percent legal and financial commitment to funding programs for the handicapped in our State statutes. In closing I wish to add that it has been a pleasure to appear here before this subcommittee to discuss an issue that concerns all of us deeply and to bring some specific problems of our State to your attention. I hope, Mr. Chairman, that you and the members of the subcommittee will consider our remarks and suggestions with special attention to the amendment affecting section 615 and due process situations which are before you in order to continue with the fine job that you are doing and that we are dong to promote a full and appropriate education for all handicapped children.

Mr. KILDEE. Thank you very much, Representative Bloom. Florida is well known for its weighting formula. As a matter of fact, the Michigan legislature in the last 2 years I was there was seriously considering adopting such a formula and is still considering

that. As a matter of fact, I think some of our legislators travelled to Florida to study it.

We really appreciate your detailed suggestions as to the incompatibility between the Federal law and the Florida Constitution and statutes. We will certainly take these into consideration in our work on this act.

Are there any questions?

Mr. JEFFORDS. I would like to commend the witness for the very specific suggestions you have made which will be extremely helpful to us in our deliberations. I can see you have put a lot of work into this testimony. It is very much appreciated.

Ms. BLOOM. Thank You. As one legislator to another I am very much aware of the fact that many of the national interest groups who are involved here have made recommendations that in a sense are worrisome not only to the advocacy groups, which have a very important role to play on behalf of all those who are affected in the community, but also somewhat worrisome to the members of Congress who wrote the bill. When you strike out any language you are striking somebody's very important previous parts. So we have learned it is much easier to add a few words here and there.

Mr. JEFFORDS. Thank you.

Mr. KILDEE. Even though we are at different levels of legislative responsibility, the U.S. Government is the creature of the States.

Ms. BLOOM. We are all creatures of the U.S. Constitution which is why, with due respect sir, I feel it is very necessary to remind you that there is a growing concern on the part of many, many States, especially as we become more vigilantly involved in the process of appropriating dollars that come from the Federal Government as to those areas where the Federal Government seems to be intruding on our 10th amendment reserve of powers.

Certainly the whole area of education is one that needs the greatest amount of caution exercised so that we do not overstep that very delicate balance that exists between what the Federal Government can provide and what the State government must protect for its own citizens.

Mr. KILDEE. Thank you very much.

We next have a panel composed of Mr. Frederick Weintraub, director, government affairs, Council for Exceptional Children, Reston, Va.; Frank Bowe, director, American Coalition for Citizens with Disabilities, Washington, D.C.; accompanied by Reese Robrahn, director, Research and Governmental Affairs, American Council of the Blind, Washington, D.C.; Daniel Yohalem, attorney, Children's Defense Fund, Washington, D.C.; Dee Everitt, member, governmental affairs committee, National Association for Retarded Citizens, Washington, D.C.

STATEMENTS OF FREDERICK WEINTRAUB, DIRECTOR, GOVERNMENT AFFAIRS COUNCIL FOR EXCEPTIONAL CHILDREN, RESTON, VA.; FRANK BOWE, DIRECTOR, AMERICAN COALITION FOR CITIZENS WITH DISABILITIES, WASHINGTON, D.C., ACCOMPANIED BY REESE ROBRAHN, DIRECTOR, RESEARCH AND GOVERNMENTAL AFFAIRS, AMERICAN COUNCIL OF THE BLIND, WASHINGTON, D.C.; DANIEL YOHALEM, ATTORNEY, CHILDREN'S DEFENSE FUND, WASHINGTON, D.C.; AND DEE EVERITT, MEMBER, GOVERNMENTAL AFFAIRS COMMITTEE, NATIONAL ASSOCIATION FOR RETARDED CITIZENS, WASHINGTON, D.C.

Mr. WEINTRAUB. Mr. Chairman, I am Fred Weintraub, Assistant Executive Director for Governmental Relations of the Council for Exceptional Children. I am here today on behalf of the 70,000 professionals in the field of special education, the people who have to carry out this law. So I think I can speak on behalf of the people who are perhaps most directly or at least immediately, administratively, and professionally affected. I would like to submit my statement for the record which I think tends specifically to dwell with many of the issues that have been raised earlier today.

I wish that the time allowed were 3 hours to respond to the 3 hours of comments that the variety of State officials have raised here today. I think that they represent aspects or charges relating to Public Law 94-142 that at the rhetoric level sounds significant but at the operative level, at least under the interpretation of the law and regulations, have questionable merit.

So I would like to highlight if I could some of those issues where we have some substantive disagreement.

Perhaps the most persistent argument that the variety of State interests have put forth against Public Law 94-142 is the cost of compliance. We certainly do not disagree that it is going to take more funds—at all levels of government to educate our handicapped children. However, there are some aspects of that argument that are set forth concerning cost that deserve some closer scrutiny.

First, no one knows how much it will cost. There are too many unreliable variables that affect accurate projections. For example, there may be fewer handicapped children than incidence projection might indicate. When the States count the number of children being served the figures come in slightly under 4 million children. Yet when the States also indicate the number of children yet to be served the figure is significantly under the projected incidence figure. We would be most delighted, I think, everyone at this table would be absolutely delighted, to find every handicapped child served and find that in fact the figure is much less than 7 or 8 million children.

The cost of adding more children in an ongoing program is not proportionately as expensive as the initial children in the program cost. What we often find is the projection of figures of cost is based upon what the cost to put 10 children in and adding another 10 is then calculated as twice as much. I think anyone who has administered programs knows that that kind of proportional increase is not accurate.

Also, as more community-based services are available, there will be less dependence on high cost residential private and public programs. The Chair knows well the tremendous cost of putting children into residence situations. Michigan has demonstrated what can be done by setting up community-based programs and the reduction both in fiscal factors as well as human factors.

Second, if we agree with the National Conference of State Legislatures in their earlier report that an initial sum of $3.2 billion will be needed, it is necessary that this figure be put in perspective. Based on the National Center for Education Systems statistics, $67.9 billion was spent on education during school year 1975–76. This figure is a 9 percent increase over the preceding year. The $3.2 billion figure quoted by NCES will represent a sum equal to about one-half of what education systems spent to meet the cost of inflation.

I think that is important. While a figure of $3.2 billion is a very significant figure, it is certainly much higher than I know how to perhaps even write, yet when you put $3.2 billion up against what we spend in America on education, particularly when we are talking about as high as 10 percent of the school population, we see that $3.2 billion figure is not a terribly significant figure.

Third, as we discuss in greater detail, Public Law 94–142 requires little that the courts and States have not already required. We therefore believe it is inappropriate for some interests to characterize the law as placing a unique financial burden on State and local government. These same interests sought Public Law 94–142, as Mr. Quie indicated, to help meet their obligations. Public Law 94–142 does that. To date the Congress authorizing and appropriating committees have met their obligations under the law. It is critical that that continue. We take great exception to various representatives coming before this committee and condemning the Congress for their failure to fully fund this act. The Congress has done that.

The Appropriations Committees have done that. They have indicated even in their report language that if additional funds are necessary they will come back with supplemental appropriations.

While certainly we will support any efforts of this to the 3 hours of comments that the variety of State officials have raised here today. I think that they represent aspects or charges relating to Public Law 94–142 that at the rhetoric level sounds significant but at the operative level, at least under the interpretation of the law and regulations, have questionable merit.

So I would like to highlight if I could some of those issues where we have some substantive disagreement.

Perhaps the most persistent argument that the variety of State interests have put forth against Public Law 94–142 is the cost of compliance. We certainly do not disagree that it is going to take more funds at all levels of government to educate our handicapped children. However, there are some aspects of that argument that are set forth concerning cost that deserve some closer scrutiny.

First, no one knows how much it will cost. There are too many unreliable variables that affect accurate projections. For example, there may be fewer handicapped children than incidence projection might indicate. When the States count the number of children

98-811 O - 78 - 5

being served the figures come in slightly under 4 million children. Yet when the States also indicate the number of children yet to be served the figure is significantly under the projected incidence figure. We would be most delighted, I think, everyone at this table would be absolutely delighted, to find every handicapped child served and find that committee to increase the authorizing levels to make it possible for more monies to be available, we do take exception to efforts to criticize the Congress for failing to fund this law. We think such criticisms don't represent the truth.

There are some who contend Public Law 48-142 places some procedural and accountability requirements that are not required by section 504, nor required by State law or court orders. Specifically mentioned have been special recordkeeping, development of new accounting systems, accelerated personnel development, and certain related services. We contend on each of these issues Public Law 94-142 is not setting forth new requirements but rather what the law requires and what causes some to balk are the requirements to better document education decisions that are being made for handicapped children. Let me give you some examples.

First: Some have stated Public Law 94-142 requires special recordkeeping. Section 613 and section 614 of the act set forth certain reporting requirements for States and localities in the form of a State plan and local applications. The issue of States submitting an annual unified State plan is not a new requirement under the act. States have been required to submit such a plan since 1965. If Public Law 94-142 is requiring more than localities can report why are many of the staunchest supporters of this act working with handicapped children in those localities?

The second issue that some have argued focuses on the development of new accounting systems. We contend the act does not require new accounting systems at all. School districts have been required to annually submit various types of data to the State. These data requirements have placed responsibility on local schools to keep records on children and establish a system that is knowledgeable. Again, Public Law 94-142 does not necessarily require more but rather better information regarding ongoing decisionmaking.

The Federal law is not requiring another layer of management for States and localities but rather is asking for more specific accountable information. I can only review the history that this committee has had over the years of trying to get very basic information for its decisions such as how many handicapped children are being served, how many teachers, how much money is being spent. I think the record of this committee will show its continual frustration in attempting to get that information.

It was the frustration of this committee in getting the information that it needed to pass this law and to monitor its effectiveness that led the committee to put these kinds of requirements into the act. We strongly urge that they be maintained.

The third issue of some concern which has been raised relates to personnel development. What we believe the Congress is concerned about and why the act provides for comprehensive personnel development is the grave concern we all share that in order for each handicapped child to receive a free appropriate education there

must be qualified professionals who will be responsible for implementing the individualized education program. The act sets out procedures that States and localities are required to document with respect to how they are going to supply adequate professionals through a cooperative manpower document (title VI-D of ESEA) have been ostensibly reporting to the Office of Education for the last five years the training needs, the training resources and most importantly a cooperative plan of action relative to what the State, institutions of higher education, and the localities must do in order to meet these training needs. If we accept these cooperative manpower documents as valid, then why are the concerns raised now when States have been engaged in documenting personnel development needs for the past 5 years?

I would also note to the committee that, under part D of title VI of the Elementary and Secondary Education Act, $45 million is spent annually for the purpose of personnel development. This is money that goes to States, this is money that goes to localities. It is disbursed cooperatively between the Office of Education in terms of national priorities and in terms of priorities set forth in the State plans. We think that States certainly could do more to improve in service efforts and to do more also in the preservice area. However we do note and do urge the committee to note that there does exist a $45 million program, there does exist planning mechanism that the States are now calling for.

Considerable attention has been accorded of late to the issue of what the States cannot do as the statutes of Public Law 94-142 relate to the child count for the purpose of the funding formula. While we would acknowledge the existence of legitimate difficulties in this area we would strongly suggest that such difficulties are not of such magnitude to warrant amending the statutes. We are inclined to concur with the complaints with respect to the prohibition against the cumulative count. However, on the issue of the prohibition against duplicative count, that is, each child may be counted only once regardless of the handicapping provisions, we part company with the critics of that provision.

Essentially two contentions are being made with respect to the prohibition against the duplicated count. When some handicapped children cost more to educate than other handicapped children, why don't we receive more money for the more expensive educational program? That is a legitimate question. One must not ignore the other side of the coin. Under the formula of Public Law 94-142 the States also do not receive less for children who cost less than other children. A child receiving speech therapy generates the same amount of money as does a child in an instructional program for the deaf and blind.

Public Law 94-142 is based upon an assumption about the average cost of educating handicapped children. To have a duplicative count would totally violate the basic principle of the law which is based upon an average cost of the education of handicapped children. In other words, the States receive more money for some children who cost less and less money for some children who cost more. Of concern to some is the requirement in section 612(6) that deals with the administrative responsibility of the State education agency in assuring that each handicapped child needing special

education receives that service in accordance with all the requirements of the act. The specific aspect of this requirement that is questioned pertains to the assignment of the State education agency of general supervision for the special education programs for the handicapped children that are provided by State or local agencies other than the education agency. This section also requires that the special education of handicapped children in other than educational agencies shall meet the education standards of the State education agency.

The concern that is alleged with regard to this requirement is that some States will have constitutional or other difficulties impeding the required administrative relationship. That different constitutions, statutes, and administrative arrangements exist in different States is well known. Yet, despite these differences, a variety of legal arrangements can be utilized to meet these requirements. Frequently, for example, written interagency agreements are developed to meet such needs.

I would cite to the chairman the regulations under Public Law 94-142 that provide for interagency agreement between States to be reached to meet that general supervision requirement. While a State education agency may maintain the overall responsibility the carrying out of that responsibility under regulations, under standard arrangement of law, can be handled through a general situation agreement. We have yet to see and yet to have documented to us anything more than rhetoric about the constitutional question involving this issue.

Representative Bloom raised before this committee an issue that we have heard on a number of occasions and that is the SEA appeal. Florida, for example, has a provision, which she well noted, which provides for an appeal agency within the State to hear appeals that are brought before it. I would note to the chairman in section 121(A)510 of the regulations of Public Law 94-142 the following provisions: "The State educational agency may conduct its review either directly or through another State agency acting on its behalf."

This situation in Florida and in other States was anticipated and the regulations have provided a mechanism whereby the authority to conduct the hearings can be delegated to another State agency as long as the State educational agency remains responsible for the implementation and carrying out of final decisions. I think if we are going to allow children to be tossed from one agency to another, as has been the case with handicapped children, what we continue to find is everyone responsible and no one responsible when no one wants to carry out for the child what is necessary.

All we are suggesting, and we think the law clearly provides, is if the State education agency wants to delegate to another agency the responsibility to hold the hearing, that is fine. That is that agency acting on behalf of the State education agency. However what we cannot have is then the State education agency not assuming the responsibility for carrying out the decisions that that other agency might render.

There are some who argue that the distribution formula for funds under Public Law 94-142 contributes to disequalization in the wealth relationship among school districts. In other words,

wealthy school districts receive the same amount per child as do poor districts. We concur that the formula in Public Law 94-142 does not contribute to equalizing wealth among school districts, but in a similar vein the same problem exists with almost all other Federal education programs. Public Law 94-142 does make an effort.

Under section 614(E) of the act which allows, in situations where handicapped children are being served in one district for the State, to withhold money from that district and provide funds to another district that might be in greater financial need. This provision, which was lobbied for by State government, is now being attacked by State government. They claim that in order to utilize the provision, they would have to admit they are not providing the requirements of the act to all handicapped children, and also leave themselves open to charges of favoritism.

In other words, the States argue that they are not willing to bear the political consequences for bringing about fiscal equalization. Rather they offer an alternative which is to authorize the States to allocate the funds to local education agencies in accordance with a formula created by the State. In many States where no equalization effort is in effect, such a provision would have no positive impact.

Second: In States which have discriminatory finance patterns, such an approach would only increase disequalization.

Third, and perhaps most importantly: We are fearful that such an approach would result in reducing the growth of State funding by using Federal funds to meet State fiscal obligations and increasing the financial liability of local school districts.

In other words, Mr. Chairman, what the States are saying to the Federal Government is that we have not been able to figure out how to equalize education financing. In our State, what we now want the Federal Government to do is to figure out how to do that. We would love to see the Federal Government do that. We would suggest though that 94-142 is not the place to begin, that if the Congress wants to take up school equalization we suggest the Congress take it up and when it is set forth in all Federal education laws we would certainly support at that time an appropriate amendment to 94-142.

My final comment deals with the IEP or the individualized education program. I believe that it is important that we clarify what we think was confusion in the comments that were brought before this committee earlier. That deals with: Is IEP a contract or is it not a contract? We think there are two parts to the IEP that relate to the issue of contract. One is it a contract that the services set forth in the IEP must be provided to the child and, two, is it a contract that the objectives or what we hope the child will learn has to be achieved? The answer very clearly under the law for the first question is yes. The answer to the second is no.

Let me explain why. The IEP is the critical link in the law between children's needs and what is going to be provided to them. If I could use the parallel of surgery, you certainly wouldn't want to have a situation where you went in for surgery on your arm only to come out of the operating room to find out that your leg was removed. Nor would you want to have surgery on your arm to find

out that the surgeon who arrives is a brain surgeon. The purpose of the IEP is simply to demonstrate what services will be provided to the child and when it is agreed upon by the parties involved, that being the parent and the school, then those services must be provided.

The law defines a free appropriate public education as an education in accordance with the child's individualized education program. Thus, to promise the parents, to say we are going to put your child in a special program because of the following reasons and going to provide the child the following services, and then turn around and not provide those violate the basic agreement with the parents as to why the child was placed in this program. In other words, special education is serious business, as you know, Mr. Kildee. It is a very serious business when we start tampering with a child's life.

The minimum that should be expected is that the services that are promised are, in fact, provided. Thus, under the law the IEP is a contract in terms of the services. However, that leads to the second issue: Do the educational objectives, what we hope the child will learn, do they have to be achieved and are we going to have suits under this act where teachers or administrators are sued because children didn't learn even though the services were being provided? I would refer you to section 121(A)(349) of the regulations which state each public agency must provide special education and related services to a handicapped child in accordance with an individualized education program.

However, part B of the act does not require that any agency, teacher, or other person be held accountable if a child does not achieve the growth projected in the annual goals and objectives. That very clearly is the result of Floor comments of Mr. Quie and Mr. Brademas that attempted to clarify that Act. To now raise that issue that says this will result in teachers and administrators being sued for the failure of children to achieve the educational objectives I think either represents a lack of understanding of the requirements of the Act or represents an effort to misrepresent the requirements of the Act.

I would like to just close my comments by saying that we think that there has been tremendous debate over Public Law 94-142. We have to commend this committee for years of hearings. If you take the record that was made in going into Public Law 94-142 it is voluminous. Hearings were held both in the House and Senate, all over the United States. Representatives at all levels from consumer representatives to professional organizations to government groups testified in relation to this act. The coalition for this act was not just advocacy groups but also many of the groups who now come in to cite opposition to provisions of this act.

Public Law 94-142 needs a chance to work. It is time that the rhetoric die and the task undertaken to make this a reality for children. Thank you very much, Mr. Chairman.

[The statement of Mr. Weintraub follows:]

PRESENTED BY FREDERICK J. WEINTRAUB, ASSISTANT EXECUTIVE DIRECTOR FOR GOVERNMENTAL RELATIONS, THE COUNCIL FOR EXCEPTIONAL CHILDREN, RESTON, VA.

Mr. Chairman, Members of the Select Education Subcommittee: I am Frederick J. Weintraub, Assistant Executive Director for Governmental Relations of The Council for Exceptional Children.

We thank you for the opportunity to appear before this distinguished panel of the House Education and Labor Committee to offer the views of The Council for Exceptional Children with respect to P.L. 94-142, the Education for All Handicapped Children Act. May we also take this opportunity to express once again to you, Mr. Chairman, the continuing admiration and warm appreciation of the membership of the Council for your unrelenting efforts on behalf of America's exceptional children.

As you know, Mr. Chairman, The Council for Exceptional Children is a national organization with a membership of approximately 70,000 professionals in the field of special education. One of the most fundamental ongoing missions of the Council, which brought us to Capitol Hill on so many occasions through the years, is to seek continual improvement of Federal provisions for the education of America's exceptional children and youth, both handicapped and gifted.

We find ourselves now nearly two years beyond enactment of the landmark Public law 94-142, the most significant Federal affirmation, in concert with corresponding State legislative mandates and court decrees, of the right to a free, appropriate public education for all of this Nation's handicapped children. Furthermore, we are now in the first months of Federal, State and local implementation of major substantive provisions of this Act.

Because this law addresses the real instructional needs of children rather than systems-oriented factors, the act certainly has generated its fair share of detractors. But we would contend that the number of such detractors are far outweighed by the number of both organizations and individuals in this country who not only are staunch supporters of both the mission and the consequent mechanisms of P.L. 94-142, but who are also determined guardians against crippling amendments—should the door be thrown open to such amendments. We believe, Mr. Chairman, that—on the balance—these hearings will amply demonstrate that broad and solid base of continuing endorsement.

Furthermore, we were pleased to observe that, in mid-July, the U.S. Commissioner of Education. Ernest Boyer, advised the Congress that "• • • any substantive amendment of the base provisions of P.L. 94-142 would be unwise at this time. Our first priority within the Office of Education is to implement these statutory provisions." Of special significance was the fact that Mr. Boyer dismissed the notion that compliance with the baseline objectives of the Act should be held hostage to the federal government picking up a certain percentage of the cost of special education, citing the fact that 48 of the 50 states have their own mandatory laws and further alluding to the reality of numerous court decrees. With respect to most other issues of potential federal/state policy conflict, the Commissioner seemed to suggest that hindrance to full implementation of P.L. 94-142 can probably be worked out in each particular state if everyone were to roll up their sleeves to tackle the issues with a maximum of cooperation. The August 23 promulgation of final regulations governing P.L. 94-142 reaffirms the determination of the Executive Branch to fulfill its implementation responsibilities with respect to the specific provisions of the law as enacted on November 29, 1975.

Who are the detractors? It has been our recurring observation that they definitely are not those individuals who are actually involved in the daily instructional environment of handicapped children. They are not parents. They are not teachers. They are, in most instances, not even educators. They are in fact quite removed, for the most part, from the handicapped child's total community, both home and school. Furthermore, we observe one characteristic of notable frequency among these detractors: a deep and abiding commitment to continuing anaylsis of the great public policy issues, such as the "Federal-State confrontation." Frankly, such issues have great significance in a university faculty club, but practically no significance whatsoever in the daily business of the classroom where the future well-being of vulnerable children is at stake.

Mr. Chairman, it may be worth noting that, when the issue becomes that of exactly which professionals will actually be on the front line with the difficult but challenging task of implementing this law, our members of the Council for Exceptional Children certainly stand in the forefront of that group. But while our members have "their feet to the fire" to fulfill the mission of P.L. 94-142, I am here today on their behalf to reiterate their continuing support for that law, and their continuing opposition to *any* crippling amendments.

It is not our purpose today to discuss again, "Why P.L. 94-142?" "Why the specific component parts of P.L. 94-142?" Literally a dozen volumes of Senate and House hearing testimony coupled with the larger legislative history accumulated over four long years of careful Congressional development of this Act provide thorough and complete answers to those questions. Rather it is our purpose today to cite the criticisms of P.L. 94-142 that we have perceived, and to offer our response to those criticisms.

COST OF COMPLIANCE

Perhaps the most persistent argument that some inerests have put forth against P.L. 94-142 is the cost of compliance. We do not disagree that it will take more Federal, State and local funds to educate all handicapped children. However, there are some aspects of the argument that deserve closer scrutiny.

First, we do not know how much it will cost. There are too many unreliable variables that affect accurate projections. There may be fewer handicapped children than incidence projections might otherwise indicate. The cost of adding more children into an ongoing program is not proportionately as expensive as the initial children in the program cost. As more community based services are available, there will be less dependence on high cost residential programs. Inflation and rising salaries are always unpredictable.

Second, if we agree with the National Conference of State Legislatures that an additional sum of 3.2 billion dollars will be necessary, it is important that that figure be placed in perspective. Based on NCES statistics, 67.9 billion dollars were spent during school year 1975-1976 on public elementary and secondary education. This figure is a 9% increase over the preceeding year. The 3.2 billion dollar figure quoted by NCSL represents a sum equal to about half of what the education systems spent to meet the cost of inflation and only represents a 4.5% increase in the overall cost of elementary and secondary education. This is particularly dramatic when it is realized that handicapped children may comprise over 10% of the school age population.

Third, as we discuss in greater detail shortly P.L. 94-142 requires little that courts and States have not already required. We, therefore, believe it is inappropriate for some interests to characterize the law as placing a "unique" financial burden upon State and local government. These same interests sought P.L. 94-142 to help them meet their obligations. P.L. 94-142 does that. To date, the Congress's authorizing and appropriating committees have met their obligations under the law, and it is critical that that continues. But now State and local government must be required to put their rhetoric aside and meet their obligations to handicapped children.

CONGRESSIONAL APPROPRIATIONS

Some apparently doubt the Congressional willingness to provide more dollars under P.L. 94-142. For instance, in a May 9 document submitted to Members of the House and Senate by five State-level organizations, one observes a tremendously unfair characterization of Congressional action in the appropriations area. They observe—quote inaccurately—that the Senate budget figure for P.L. 94-142 falls some 20 percent short of the authorization for fiscal 1979. That conclusion indicates no knowledge of the facts: that with a child count in the next school year that averages out at 4 million children (which would still have to be approximately one-half million more children than counted in this school year) the authorization ceiling thus generated would be approximately $600 million.

But a larger issue is being raised by this group through this inaccurate characterization of the facts. Frankly, they are suggesting that the Congress is not committed to appropriate funding. Again, the facts suggest the opposite. In recent appropriations action (H.R. 7555) (again, keeping a $600 million minimum ceiling in mind), House and Senate conferences have recommended an advance appropriation for fiscal 1979 of approximately $535 million, which would include a carry-over of approximately $70 million from fiscal 1978 which was previously appropriated but not generated under the first child count.

We as an organization are disturbed at this unfair characterization of the Congressional funding commitment when we observe the further notable step taken by the House and Senate conferees on H.R. 7555 in expressing their intention to make clear that a supplemental appropriation will definitely be considered if the child count in the coming school year should generate a larger entitlement than the actual appropriation now being finalized (originally proposed by the House). We hope that all of these same organizations will begin to join with us in actively encouraging the Congress to continue to enhance the Federal fiscal contribution.

NEW REQUIREMENTS?

There are some who contend that P.L. 94-142 places some procedural and accountability requirements that are not required by Section 504, not required by State law or court orders. Specifically mentioned have been special recordkeeping; development of new accounting systems, accelerated personnel development and certain related services. We contend that on each of these issues, P.L. 94-142 is not setting forth new requirements, but rather what the law requires and what causes some to balk are the requirements *to better document* the education decisions that are being made for handicapped children. But let us explore these issues further.

First, some have stated that P.L. 94-142 requires special recordkeeping. Section 613 and Section 614 of the Act set forth certain reporting requirements for States and localities in the form of a State plan (Sec. 613) and local applications (Sec. 614). The issue of States submitting an annual unified State plan is not a new requirement under this Act. It has been required since original passage of the Education of the Handicapped Act in the late 1960's. Ostensibly States have accurately been certifying to the Federal government that which occurs in the States regarding the education of handicapped children. So, on the State level, these reporting requirements are not new, and therefore, should not be so characterized.

What may be raised however as a legitimate concern regarding recordkeeping is the matter of the local application, because this will be the first year that all localities which want to receive a local entitlement are required to submit a written set of assurances regarding the manner in which the locality is providing a free appropriate public education. For a great many local agencies, however, this is not a new requirement. For example, the States of Florida, Massachusetts, Colorado, Texas and Minnesota, to name several, have long required annual local applications.

One need only ask local schools about the extensive requirements that the States themselves place on localities on every education issue to know that localities are quite conditioned to these reporting requirements. If P.L. 94-142 was requiring more than localities can report, why then are many of the staunchest supporters of this Act the very personnel who work with handicapped children in the localities?

The second issue that some have argued focuses on the "development of new accounting systems." We contend that the Act is not requiring new accounting systems at all. Historically, school districts have been required to at least annually submit various types of data to the State. These data requirements have placed a responsibility on local schools to keep records on children and establish a system that is accountable. Again, P.L. 94-142 does not necessarily require *more* but rather *better* information regarding on-going educational decision making. The Federal law is not requiring another layer of management for States and localities but rather is asking for more specific, accountable information.

For example, every school district in this country has an established procedure for determining if a child is handicapped and whether or not the child requires special education and related services. For a number of years, good practice has indicated that teams of professionals should contribute to the education decision making for the child. As a result, many well meaning professionals have argued and some State policy now requires specific numbers of professionals to be involved in the assessment and placement of a handicapped child. Now several problems occur as a result. First, some States maintain policies which require input from as many as nine or ten professionals such as psychologists, social workers, nurses, counselors, teachers and administrators. They diagnose, report and meet with respect to each handicapped student. Depending on the severity of the child's handicap, it may make some amount of sense to involve all of these professionals. However, proper diagnosis and reporting procedures for many children do not always warrant the extensive and very costly (financially and in terms of amount of time) requirement of involvement of so many professionals.

The Congress, in its wisdom, through the individualized education program requirement of the Act, in fact only mandates the involvement of three persons, the parent, the teacher, and a representative of the local education agency in the decision making process. Inclusion of the students is permissive when appropriate.

To argue that this requirement is more expensive is only true if States and localities are placing this requirement on top of what they are currently doing. If in fact, States and localities take a careful look at their management and accounting systems for handicapped children and refine and streamline them, then in fact, we contend that there is a strong suggestion that the new accounting system will require fewer people, less paper to Xerox, consume less professional time and therefore, cost less.

The third issue of some concern which has been raised relates to personnel development. What we believe the Congress is concerned about and why the Act provides for comprehensive personnel development is the grace concern we all share that, in order for each handicapped child to receive a free, appropriate education, there must be appropriately qualified professionals who will be responsible for implementing the individualized education program. The Act sets out procedures that States and localities are required to document with respect to how they are going to supply adequate professionals.

The States, through a cooperative manpower document (Title VI-D of ESEA) have been ostensibly reporting to the Office of Education for the last five years the training needs, the training resources and most importantly a cooperative plan of action relative to what the State, institutions of higher education and the localities must do in order to meet these training needs. If we accept these cooperative manpower documents as valid, then why are the concerns raised now when States have been engaged in documenting personnel development needs for the past five years?

The fourth issue of concern regards certain related services that might be required to assist a handicapped student to receive a free appropriate education. We acknowledge the fact that the related services area is one with which some school districts have previously had little experience. If a child needed a specific related service but the school district could not provide or *arrange* for the provision of such service, then the child's unique needs were placed in jeopardy—either the child went without the service or in many cases, an extreme financial burden was placed on the family to pay for the service. One of the fundamental objectives of P.L. 94-142 is to correct this situation and provide a mechanism of accountability that will assure that each handicapped child who requires special education and related services will receive them. The Act clearly requires localities to end the practice of simply permitting the child to fall between the cracks of the various public agencies. The Act is not necessarily requiring schools to themselves hire all new professionals but rather is requiring them to make certain that each handicapped child has the services which the chidl needs, whether that be done by link-up to existing systems and their resources, or by the development of new resources *if none are available.*

COUNTING

Considerable attention has been accorded of late to the issue of what the States cannot do as the statutes of P.L. 94-142 relate to the child count for purposes of the funding formula. While we would acknowledge the existence of legitimate difficulties in this area, we would strongly suggest that such difficulties are not of sufficient magnitude to warrant an amending of the statutes.

We are inclined to concur with the complaint with respect to the prohibition against a cumulative count. Under the Act, children may be counted for purposes of the Federal funding formula only on October One and February One in each school year. A respectable case can be made that a good number of children pass in and out (for instance, speech therapy and programs for emotionally disturbed children) of the special instructional environment during the course of a given school year, but that on any given October One and February One many of these children are "out."

However, on the issue of the prohibition against a duplicated count, that is, each child may be counted only once regardless of the number of handicapping conditions, we part company with the critics.

Parenthetically, we observe the following statement in the same May 9 document submitted by certain State-level organizations alluded to previously:

> The exact magnitude of the undercount produced by the current census mechanism will not be known until later this year, but preliminary figures reveal that it is substantial. According to one survey of 35 States, the requirement of an unduplicated count resulted in 396,000 fewer aid-eligible pupils that would have been generated by a duplicated count.

This statement is both inaccurate and terribly misleading since it suggests that the Congress, in the formulation of P.L. 94-142, simply wrote off some 400,000 eligible handicapped children. The requirement of the unduplicated count does not result in "396,000 fewer aid-eligible pupils," but rather it means that 396,000 *other* handicapping conditions of x population of *counted* children cannot be thrown into that count. To reiterate: all handicapped children receiving special education may be counted under P.L. 94-142, but not all of the handicapping conditions of any given child.

Essentially two contentions are being made with respect to the prohibition against a duplicated count. When some handicapped children cost more to educate

than other handicapped children, why don't we receive more money for the more expensive educational program? That certainly is a legitimate question, but one must not ignore the other side of that same coin: under the formula of P.L. 94-142 the States also *do not receive less* for children who cost less than other children. A child receiving speech therapy generates the same amount of money as does a child in an instructional program for the deaf-blind. P.L. 94-142 is based upon an assumption about the average cost of educating handicapped children.

The second contention raised bears upon a larger anxiety, namely, that because of these counting constraints, the States cannot generate funding ceilings originally estimated when P.L. 94-142 was in development. Again, the facts tell otherwise. Even using what very likely will be too low a count of four million children in school year 1978-79, and even not allowing for an inflation factor in the national average per pupil expenditure between school years 1977-78 amd 1978-79, it appears that we will generate at least the same amount of money for the fiscal 1980 entitlement as originally estimated for that fiscal year in the House-Senate conference on P.L. 94-142 in the Autumn of 1975. Thus, while the start-up for fiscal 1978 and 1979 on the five and ten percent factors have indeeed been somewhat problematic from the standpoint of fiscal authority generated under an initially low child count, the gap between original and later authorization estimates is being rapidly closed. We would therefore contend that this lengthy dialogue on the supposed weaknesses of the funding formula has been rendered moot. We would further recommend that much of the energy expended by certain State-level organizations in a debate with respect to the funding formula of P.L. 94-142 be redirected toward eliminating the all too numerous shortcomings with respect to the in-State procedural systems for counting children.

SEA GENERAL SUPERVISION

Of concern to some is the requirement in Section 612(6) of P.L. 94-142 that deals with the administrative responsibility of the State education agency in assuring that each handicapped child needing special education receives that service in accordance with all of the requirements of the Act. The specific aspect of this requirement that is questioned pertains to the assignment to the State education agency of "general supervision" for the special education programs for handicapped children that are provided by State or local agencies other than the education agencies. This section also requires that the special education of handicapped children in "other" than education agencies shall meet the education standards of the State education agency.

The concern that is alleged with regard to this requirement is that some States will have constitutional or other difficulties impeding the required administrative relationship. That different constitutions, statutes, and administrative arrangements exist in different States is well known. Yet, despite these differences, a variety of legal arrangements can be utilized to meet these requirements. Frequently, for example, written interagency agreements are developed to meet such needs. The Council for Exceptional Children has over the past decade been involved in designing many such arrangements. As only one example of what can occur, in the State of Florida today a cooperative planning agreement has been written between the Program Office for Mental Retardation of the Department of Health and Rehabilitative Services and the Department of Education.

By inclusion of this requirement in the Act, the Congress recognized and attempted to deal with a major problem concerning the education of handicapped children who for a variety of reasons receive their education through other than education agencies, such as State departments of mental retardation, welfare, health, mental hygiene or others. Frequently the educational services received by these children were non-existent or of limited quality and quantity, particularly as contrasted with their peers enrolled in public school programs administered by State and local education agencies.

Factual substantiation of the failure to appropriately educate these children can be found in many of the right to education lawsuits that preceded P.L. 94-142 in which the "other" agencies were included in the listing of defendants. Of particular note is that in *Wyatt* v. *Stickney*, the first right-to-treatment suit brought in 1970 in Alabama, specific standards were ordered to provide an appropriate education for the mentally retarded children residing in Partlow State School, which was operated by the Department of Mental Health.

In the well known *Pennsylvania Association for Retarded Children* v. *Commonwealth of Pennsylvania*, specific attack was made upon a statutory gap which freed the Department of Welfare, which was responsible for caring for some retarded children, from providing any education services at all. A related problem for some

deaf or blind children has been that the legal responsibility for their education has rested with independent or autonomous state boards or commissions that also have failed to establish and operate programs that were appropriate for some of their children. Until recently, for example, Kentucky had such an arrangement for deaf children. Recent changes, however, have now extended the responsibility for those children to the Kentucky Department of Education.

The sheer force of logic in achieving responsible management from both a fiscal and an educational standpoint dictate state education agency authority with respect to P.L. 94-142. First, the funds under this Act flow through the SEA. If efficiency and administrative control are to be maintained, it seems imperative that the regulatory role be maintained within the agency through which the funds flow. Secondly, a given state may or may not have, for instance a Department of Mental Retardation. But every state has a state education agency. Thus, we have a state by state uniformity for purposes of maintaining accountability, rather than the distasteful prospect of different agencies in different states being responsible in different ways. Thirdly, maintenance of responsibility within the SEA, which agency is certain to house professional educational expertise while other agencies may not, greatly reduces the likelihood of non-existent or totally inadequate instructional programs in other delivering agencies.

And lastly, the Congress, by including this provision, affirmed the direction being taken by those states which have themselves been searching for a solution to the multi-agency dilemma.

In summary, then, the intent of this section of P.L. 94-142 is to create consistency in administration and adherence to education standards, including the qualification of personnel in educating handicapped children regardless of where they receive their program. The result will be an effective capacity for state education agencies to assure that all handicapped children have available to them a free public education.

That a variety of agreements can be used to meet the requirements of the Act has already been indicated in the final regulations for implementation of P.L. 94-142. That such agreements are often politically difficult within the States must be recognized, particularly when such agreements require changes in the behavior of one or more agencies. However, such difficulties must not be allowed to perpetuate the inappropriate education of any handicapped children.

SURROGATE PARENT

One of the most frequently heralded elements of the entire Act is the careful and precise structuring of the procedural safeguards provided to insure that all decisions regarding the education of handicapped children occur in a rational and fair manner. The essence of these safeguards is that the interests of the child be primary and in some instances may be different from those of the school and/or the parents. Yet, this modern concept is built upon traditional due process which requires that for minor children, their parents be totally involved. Frequently, it is the parents of the child who initiate the due process mechanism in response to a proposed decision of the public schools.

Some however have raised questions about the surrogate parent provision (Sec. 615(b)(1)(B)). Handicapped children whose parents are unknown, unavailable or who are wards of the State approach traditional due process at a distinct disadvantage. This was recognized by the Congress in P.L. 94-142 in the requirement that such children be provided with a surrogate parent for the varying rights and protections of the Act. Since it was recognized by the Congress that employees of agencies often as a result of their employment are frequently unable to divorce that interest from their child decision making responsibilities, they are in P.L. 94-142 specifically prohibited from serving as surrogate parents. Examples of unhappy results of these conflicts have recently been brought to the Nation's attention through the Congressional hearings held regarding the out-of-State placements made by welfare workers acting on behalf of foster children.

The intent of the P.L. 94-142 surrogate provision is to guard against the inappropriate education of handicapped children without available parents. It further serves to restrict service as surrogates to people independent of child service agency employment. This provision is exceptional in its intent since in addition to protecting children, it also protects public employees from being placed in a position inherently in conflict, a clear service to the employee as well as the child. Consequently, this provision of this law should remain as originally cast. However, we do recognize that there may be specific State child service agency configurations which sufficiently isolate those employees who are directly involved from those assuming other responsibilities. When this occurs, it may be appropriate for those without

direct service responsibilities to serve as surrogates. If such arrangements meet the Congressional intent, then Congress should instruct the adminstration to so indicate through carefully drawn regulations.

SEA APPEAL

In reviewing the procedural safeguards section of P.L. 94-142, some have questioned the requirement for the opportunity of State level appeals following the impartial hearing. The necessity for such an appeal reflects the Congressional concern as indicated throughout the Act whereby the State maintains the responsibility for educating handicapped children. Given this responsibility there must be a State capacity to enforce its own requirements. In this case, those requirements will be contained in the annual program plan for the education of handicapped children.

Furthermore, the provision of state-level appeal in this Act again reflects the direction in the majority of those states which are now well along in the development of procedural safeguard mechanisms. Undoubtedly a governing consideration has been the obvious prospects for enhancing impartiality due to the sheer "distance factor" from the local school district itself. And finally, the inclusion of this requirement in P.L. 94-142 constitutes an acknowledgement that, in general, where state administrative appeal procedures are in fact in operation, a timely and equitable forum for resolution of conflict is afforded and the number of cases going to the courts is reduced, which court litigation is often of unbearable cost to parents.

While reiterating that this crucial requirement is appropriate and in fact mandatory, we recognize that in some States there are no provisions for such appeals to be conducted by the State education agency. Yet it is known that there are usually a variety of State-wide administrative procedures which incorporate the opportunity for an appeal. Consequently it would be our recommendation that in the regulations promulgated for this Act the States be permitted to utilize these alternative administrative appeals procedures. However, it must be added that whenever this approach is to be utilized the appeals that are conducted must meet all of the existing requirements of P.L. 94-142. This means for example that when such appeals are held by other than the State education agency, they be governed by written agreement clearly establishing the SEA as the responsible agency.

IN-STATE DISTRIBUTION

There are some who argue that the distribution formula for funds under P.L. 94-142 contributes to disequalization in the wealth relationship among school districts. In other words, wealthy school districts receive the same amount per child as do poor school districts. We concur that the formula in P.L. 94-142 does not contribute to equalizing wealth among school districts, but in a similar vein the same problem exists with almost all other Federal education programs. P.L. 94-142 does make an effort, however, to ameliorate the problem Section 614(e) provides that

> (e) Whenever a State educational agency determines that a local educational agency is adequately providing a free appropriate public education to all handicapped children residing in the area served by such agency with State and local funds otherwise available to such agency, the State educational agency may reallocate funds (or such portion of those funds as may not be required to provide such education and services) made available to such agency, pursuant to section 611(d), to such other local educational agencies within the State as are not adequately providing special education and related services to all handicapped children residing in the areas served by such other local educational agencies.

This provision, which was lobbied for by State government, is now being attacked by State government. They claim that in order to utilize the provision, they would have to admit they are not providing the requirements of the Act to all handicaped children, and also leave themselves open to charges of favoritism. In other words, the states argue that they are not willing to bear the political consequences for bringing about fiscal equalization. Rather they offer an alternative which is to authorize the States to allocate the funds to local education agencies in accordance with a formula created by the State. In many States where no equalization effort is in effect, such a provision would have no positive impact. Second, in States which have discriminatory finance patterns, such an approach would only increase disequalization. Third and perhaps most importantly, we are fearful that such an approach would result in reducing the growth of State funding by using Federal funds to meet State fiscal obligations and increasing the financial liability of local school districts.

For example, some State laws provide for the State to assume 100% or a significant portion of the cost of educating handicapped children. However, the State sets an arbitrary figure for that cost each year because of budget limitations and then throws the liability (legal and fiscal) into the school districts. This situation could only be worsened if the proposal that the State be able to integrate the local education agencies' share of P.L. 94-142 funds into their existing financial distribution structure were allowed. In summary, we concur that the basic distribution formula of P.L. 94-142 does not contribute to school fiscal equalization. Section 614(e) provides a workable mechanism to deal with this issue that States find polictically unacceptable although they lobbied for the mechanism. School equalization is an issue bigger than P.L. 94-142 and until such time as the Congress develops a nationally agreed upon strategy that would be applicable to all relevant Federal programs, we do not believe that P.L. 94-142 should be the vehicle to solve the problem. P.L. 94-142 cannot alone solve the problem, in any event.

THE INDIVIDUALIZED EDUCATION PROGRAM

There are those who suggest amending P.L. 94-142 by specifying that the written individualized education program (IEP) is not a contract for services. To adopt such a provision would render valueless the cornerstone provision of P.L. 94-142. The IEP is a management tool in order to link a handicapped child to the educational services he or she requires. The law says that the children are entitled to a free appropriate public education. Free appropriate public education is specified in the law as an education in accordance with the child's IEP. Thus, while the law does not describe the services set forth in the IEP as constituting a contract, to fail to provide those services would be denying the child a free appropriate public education and thus a valid grievance under the Act.

The reason this provision of the Act is important is that to determine that a child is handicapped and to then place the child in a program is a very serious business. The decision is one of the most, if not the most, important decision that will be made in the child's life. That is why the courts, State legislatures, and the Congress have required that placements be appropriate to the child's needs and that procedural safeguards be available. The IEP is a mechanism to reach and document agreement on what is appropriate. To do what some are suggesting, namely, asserting that there is no requirement to provide what has been agreed to, makes a mockery out of the entrie process and throws children back into the state of jeopardy that this Act and the courts have tried to prevent.

It should be clarified that the Act does not require that the educational objectives set forth in the IEP be achieved, but rather provides for at least annually reviewing the child's progress and adjusting the IEP accordingly. We agree with this provision of the Act but we strongly disagree with any effort to dilute the obligation that services promised will be provided.

FULL SERVICE DATES

For those who find the "dates certain" in P.L. 94-142, at which time a free, appropriate public education must available to all handicapped children, to be "too soon" and "too much," quite a number of forceful counter-arguments could be raised.

For the moment, however, may we simply offer the following facts. Of all of the states, only five contain dates for mandatory service beyond those contained in P.L. 94-142, and at least two out of the five would seem to require the education of all handicapped children now, regardless of statutory dates.

Arkansas—9/79
Kansas—1979 (7/1/74 for DD)
Maryland—1979 (court order: 9/75)
Montana—7/79
North Dakota—7/80 (as soon as identified, handicapped must be served).

IN SUMMARY

Mr. Chairman, P.L. 94-142, the Education for All Handicapped Children Act, is a good act, unusually well thought-out over a long period of time. It has withstood, and will continue to withstand, the test of both positively inspired and negatively inspired criticism. Moreover, to amend it at this juncture, when we are only a few weeks in the school year in which some of its major provisions are being implemented, would fly in the face of reason.

It will be beyond initial implementation that we will know in any responsible way what perfecting amendments may or may not be in order. Therefore, Mr. Chairman,

we most strongly urge against any amendments in the spirit of the Act itself, which carries no expiration date.

Mr. Chairman, we again thank you for the opportunity given the Council to appear today on behalf of exceptional Americans. In closing, may we simply reiterate that we stand prepared to make the full resources of The Council for Exceptional Children available to this Subcommittee as it fulfills its legislative charge with respect to oversight of the Education for All Handicapped Children Act of 1975.

Mr. KILDEE. Thank you very much, Mr. Weintraub.

STATEMENT OF JAN JACOBI, AMERICAN COALITION FOR CITIZENS WITH DISABILITIES, WASHINGTON, D.C., ACCOMPANIED BY REESE ROBRAHN, DIRECTOR, RESEARCH AND GOVERNMENTAL AFFAIRS, AMERICAN COUNCIL OF THE BLIND, WASHINGTON, D.C.

Ms. JACOBI. I am Jan Jacobi. I am here substituting today for Dr. Frank Bowe, director of the coalition. Mr. Robrahn, who is one of our board members of the coalition as well as director of research and governmental affairs, American Council of the Blind, will be pleased to present our testimony. I would like to point out that all the members of this panel today represent organizations which are members of ACCD and of course the coalition endorses their comments.

STATEMENT OF REESE ROBRAHN, DIRECTOR, RESEARCH AND GOVERNMENTAL AFFAIRS, AMERICAN COUNCIL OF THE BLIND

Mr. ROBRAHN. I am not going to dwell too much on that facet but it is my intention to enumerate some of the concerns of organizations, who are made up of handicapped individuals, with regard to the implementation of 94-142.

Much of the objection and many of the complaints concerning the implementation of Public Law 94-142, and its regulation, while voiced more simplistically, are in reality, based upon the philosophical and/or constitutional legal question of Federal Government interference with and exercise of authority over a sovereign right and governmental function of the States.

The American Council of the Blind and the American Coalition of Citizens with Disabilities believe, in this regard, that such laws as Public Law 93-380, the Education of the Handicapped Act, and Public Law 94-142, the Education of All Handicapped Children Act, are designed primarily to enunciate the right of all children with handicaps to a free and appropriate education like that provided by each State for children generally—albeit pursuant to the decisions of the courts of our land—and to provide public funds at the Federal level to assist the States and their public educational systems to meet the program and facility requisites necessary to make that right a reality.

We believe that Public Law 94-142 and its specificity of the regulations are necessary, appropriate, and reasonable and well within the constitutional constraints of our democratic system of government.

We commend this subcommittee and the Congress for the literally thousands of hours expended on behalf of the development and enactment of law. Likewise, we commend the Bureau for the Education of the Handicapped, Office of Education, Department of Health, Education, and Welfare, for the procedures and programs

established and conducted by it which were designed to gain the participation and involvement of all segments, consumer and advocacy organizations, the teaching professions, public school administrators and administrators of educational programs of the States, and the general public, alike, in the development of the regulation promulgated for the implementation of Public Law 94-142, as published in final form on Tuesday, August 23, 1977. That effort and the accompanying public awareness effort is extraordinary and highly desirable and commendable.

While the American Coalition of Citizens with Disabilities and the American Council of the Blind find some fault with the final regulation, we are reasonably satisfied with it. We believe that there has not been sufficient time elapsed since the effective date of the regulation to properly assess the realities of its implementation. We urge this subcommittee and the Congress to refrain from tampering with this law and its regulation.

We further believe that the greatly publicized high costs of compliance with the law and its regulation on the part of some officials and members of the education community are grossly exaggerated or determined without adequate knowledge and information; and that therefore the true costs can be borne without undue hardship. However, if this subcommittee finds and the Congress finds from all available facts and information that there is a need to provide additional financial assistance from Federal funds to assist in compliance with the law and its regulation, then we would not voice opposition to reasonable measures providing for the same.

We voice our concern over the apparent reluctance or outright resistance of the education community to recognize and meet its affirmative action responsibilities in employment of handicapped individuals.

We further voice our concern over the reluctance, and outright neglect of many school districts to respond to reporting obligations; and thus interfering with the compliance and enforcement capability of the Office for Civil Rights, Department of HEW, and of the Bureau for Education of the Handicapped.

We voice our concern over the failure of the Office for Civil Rights to develop data information needs for incorporation with traditional and existing compliance reports, thus substantially limiting its compliance review capability. It is our understanding, however, that the Office for Civil Rights—HEW—has now developed a plan for the revision of such reports so that appropriate compliance data is included concerning the handicapped.

And further we voice our concern over the announced intention or position of many school districts to deny a free and appropriate public education program in the least restrictive environment for all categories of handicapping conditions or disabilities, such as children with visual impairment, on the grounds that the school facilities are not accessible at a given time. Architectural barriers are not barriers among all categories of handicapping conditions or disabilities. For example, narrow doors and stairways constitute architectural barriers to children in wheelchairs; narrow doors and stairsteps present no barrier and no deterring factor to children with visual impairment.

We express our concern that cost estimates and claims for the provision of buildings and grounds accessibility and program accessibility are grossly exaggerated because such cost estimates and claims are arrived at on the basis of information that is untrue, unreliable, and inappropriate; and that those who are informed and familiar with the true and actual needs and requirements for such compliance, handicapped people themselves, are not consulted and have no part in establishing such figures.

We also voice our concern that adequate steps are not being taken by many school districts to establish ongoing programs of teacher and administrator in-service-training, and to effect a policy and practice of employment of truly qualified special or resource teachers and special education administrators.

We voice our concern that the Bureau for the Education of the Handicapped by way of official policy will conduct its administrative functions with regard to the implementation of the act in an atmosphere of "hands-off" permissiveness to such an extent that the Federal funds appropriated by this Congress will not achieve the purpose for which they are intended, that is to say, a free appropriate education in the least restrictive environment for all handicapped children.

We voice our concern that the Advisory Committee for the Handicapped to the Bureau for the Education of the Handicapped has been abolished by the Congress at a time when the existence of such an advisory body is most essential and appropriate, during the implementation of Public Law 94-142; and thus closing a most important avenue for public and consumer input to the Bureau for the Education of the Handicapped.

With regard to some of the complaints I have heard here this morning, and I have heard previously, that is to say that the law itself and its regulations are too explicit, have contained too much detail and thus prevent flexibility and that there is duplicity and conflict with State laws, I participated on the State level in the development of the Kansas mandatory law on education for handicapped children and at that time S. 6 was being considered before this Congress and it was over a period of at least 2 years and constantly urged the legislature of the State of Kansas to effect provisions in its statute which would conform as nearly as possible, and where appropriate, with what was being proposed on the Federal level, thus avoiding a lot of the rather minor but bothersome and confusing inconsistencies that might result in the two acts.

I think that there may be some complaint with regard to too much specificity on certain grounds such as in the due process requirements but for the most part most inconsistencies which might arise were actually taken care of in the language of the law itself or in the regulations.

Mr. KILDEE. Mr. Robrahn, if you will permit me to interrupt at this moment, there is a rollcall. I will go over and come back shortly. If you will be patient with me, we will resume when I come back so that you may complete your statement, sir.

[A brief recess was taken.]

Mr. KILDEE. Thank you for your indulgence. I have returned, having cast my vote dutifully. We will resume now with the testimony of Mr. Robrahn.

98-811 O - 78 - 6

Mr. ROBRAHN. Before making a very short closing statement I would like to add one fact to our discussion concerning the individualized education program. Whether we call it a contractor or whatever name we give it, its real purpose is to provide a design on the basis of professional input, apparent input, a program which will provide the services which will fulfill the constitutional rights of each child for an appropriate public education just like every other child. So that is its basic purpose.

In conclusion, we respectfully call upon this subcommittee and the Congress through oversight hearings such as this one to bring about, by legislation if necessary, the following: Strong leadership in the establishment and maintenance and statutory provisions and procedures prescribed for education of handicapped children, and vigilance in review and monitoring of these; and further urging that special emphasis be given the following essentials:

First, diagnosis and evaluation must be done by qualified personnel.

Second, full information must be given parents concerning: (a) Parents' and child's rights; (b) the child's education needs; (c) the services required to meet those needs; and (d) the range and location of resources available to meet these education needs.

Third, that a full continuum of settings, facilities, and services be provided for in each State.

Fourth, assessment and evaluation criteria should be established which measure the progress of each child toward attainment of his maximum potential.

Fifth, criteria for assessment and evaluation of programs be established which measure their effectiveness in terms of achievement of the realization of all students' maximum potential.

Sixth, that there be established a committee of consumers advisers having a membership comprised of representatives of national organizations of the major handicapping conditions, or the purpose of advising and participating in all aspects of the functions of the Bureau in the education of handicapped children, and in particular with regard to the implementation of Public Law 94-142, and section 504 of the Rehabilitation Act of 1973, as amended.

Thank you very much.

Mr. KILDEE. Thank you very much, Mr. Robrahn.

The next person to testify is Daniel Yohalem, attorney for the Children's Defense Fund.

STATEMENT OF DANIEL YOHALEM, ATTORNEY, CHILDREN'S DEFENSE FUND, WASHINGTON, D.C.

Mr. YOHALEM. I would like to thank the subcommittee for inviting me to testify today in regard to Public Law 94-142, the Education for All Handicapped Children Act. I will summarize my written testimony in the interest of time and request that my complete testimony be included in the record of these hearings.

Mr. KILDEE. It is so ordered without objection.

Mr. YOHALEM. I am testifying on behalf of the Children's Defense Fund. As the attorney responsible for the Children's Defense Fund's special education activities, I want to inform this committee that the handicapped children we represent throughout this country are counting on full and forceful implementation of Public Law

94-142 when it goes into effect on October 1, 1977. This comprehensive act sets forth the fundamental rights necessary to insure that all handicapped children receive the free appropriate public education to which they are entitled.

As you are very well aware, Public Law 94-142 was not hastily enacted, nor is it a passing experiment in new social theories. This law was passed only after years of public hearings, debate, consultation, and investigation. It represents Congress, indeed the country's, best judgment about the essential rights needed to combat centuries of exclusion of handicapped children from the Nation's schools. As is clear from the legislative history, it also represents Congress statement of what the U.S. Constitution requires for handicapped children. And, lastly, it represents a new and generous Federal role in financing educational services for handicapped children, thus helping the States meet their constitutional obligations.

The Children's Defense Fund applauds Public Law 94-142 and the crucial role that you and the members of this subcommittee played, in the development of this critically important act. We see this legislation and Section 504 of the Rehabilitation Act of 1973 as offering the greatest promise for insuring educational programs for this country's handicapped children. We have provided parents throughout the United States with written materials explaining their children's rights under Public Law 94-142 and have advised lawyers as to the Act's various legal mandates.

We are also representing in litigation handicapped children who are still, even in 1977, either totally excluded from school or isolated from normal life in segregated programs.

In fact, this past summer we won a major victory on behalf of the class of all handicapped children in the State of Mississippi, enforcing Public Law 93-380—the predecessor of Public Law 94-142—in a suit against officials of the Mississippi Department of Education. In *Mattie T., et al.* v. *Charles Holladay, et al.*, Civil Action No. DC-8531-S (N.D. Miss., July 28, 1977—Judge Orma R. Smith of the United States District Court for the Northern District of Mississippi granted the plaintiff-children's motion for summary judgment, holding that the defendant Mississippi officials had violated the Education of the Handicapped Act—Public Law 93-380—by failing to adopt sufficient policies and procedures to insure plaintiffs:

(a) Procedural safeguards, including prior notice and an impartial due process hearing, to challenge decisions regarding their educational evaluation and placement, pursuant to 20 U.S.C. No. 1413(a)(13)(A) (Supp. IV, 1974);

(b) A program to locate and identify all handicapped children in the State in need of special education services, pursuant to 20 U.S.C. No. 1413(-)(1)(A) (Supp. IV, 1974);

(c) Racially and culturally nondiscriminatory tests and procedures used to classify them as handicapped and place them in special education programs, pursuant to 20 U.S.C. No. 1413(a)(13)(C) (Supp. IV, 1974); and

(d) Educational programs which are in normal school settings with nonhandicapped children to the maximum extent appropriate, pursuant to 20 U.S.C. No. 1413(a)(13)(B) (Supp. IV, 1974).

Mattie T. conclusively establishes that State departments of education have a legal duty to adopt sufficient policies, adequately monitor local school districts, and effectively enforce compliance with the Federal education requirements throughout each of their respective States. This decision, the first under the Education of the Handicapped Act, comes at a critical time, as we move into implementation of Public Law 94-142. It puts States and HEW on notice that the Federal courts rightly intend to take Congress seriously by enforcing its excellent legislation. Thus, we urge this subcommittee to take a strong stand at this time in support of implementation of Public Law 94-142.

There must be no waffling by the Federal Government. The Bureau of Education for the Handicapped (BEH) must now transform itself from a relatively passive grant-giving agency into a forceful compliance agency in order to fulfill Congress clear mandate that BEH enforce Public Law 94-142.

The important lesson for us of the *Mattie T.* case is for over 2 years the Federal Government through BEH has been funding a program in Mississippi that is in violation of the Education of the Handicapped Act. BEH has knowingly done so. The Children's Defense Fund has repeatedly made BEH aware of the very significant problems in Mississippi and we have repeatedly implored BEH to accept its statutory responsibility to achieve compliance from the States. The Education for the Handicapped Act, both the 93-380 and 94-142, requires BEH and the States "to insure that the various safeguards are emplaced throughout its State." But BEH has in the past, and continuing today, steadfastly refused to take its mandate "to insure" seriously. We have been repeatedly informed by BEH that it does not have the power to requre the States to carry out specific activities necessary to insure full compliance with the Education of the Handicapped Act.

For example, it was States in testimony in the *Mattie T.* case by the State department of education officials in Mississippi that only through the conduct of onsite visits by State department education officials could it be determined whether there was actual compliance with the various requirements of the act in the school districts in Mississippi. Further, officials of the Bureau of Education for the Handicapped agree that only through onsite visits can it adequately be determined whether there is real compliance not simply paper compliance with the act.

Yet BEH today is still unwilling to mandate onsite visits by State educational agencies as a requirement of the act, as a fulfillment of the actual requirement to insure compliance with the act mandates. We contend that this is a clear dereliction of duties by BEH. Therefore, we call upon this subcommittee to exercise its oversight powers to insure now that BEH effectively fulfills the role this subcommittee and the Congress has given it by requiring BEH to commit such staff and resources to develop firm compliance standards, adequately monitor the States actual, not just paper, compliance activities and vigorously enforce all of the act's requirements.

BEH does not yet have the staff committed to compliance activities necessary to do this. Furthermore, it has come to our attention that the Federal Office of Management and Budget has squashed whatever small efforts BEH has made over the past year to system-

atically monitor what States are doing to comply with 94-142. The Federal Government, especially BEH, must now apply the new regulations to the facts found in the States and must make firm decisions about what is necessary to protect the rights of handicapped children. In far too many instances BEH has allowed States to avoid compliance with Federal law.

In fact, had BEH more forcefully enforced Public Law 93-380, the States would now be in a far better position to comply with Public Law 94-142, and millions of children would have been spared the continuing tragic consequences of exclusion from school, misclassification, and segregation. The need for effective action by BEH is long overdue.

It is our sincere hope that this committee will do something about that.

Mr. KILDEE. Mr. Yohalem, the two bells indicate there is another rollcall vote, and I must go to the House. I will try to be back as quickly as I did before, after I cast my vote.

[A brief recess was taken.]

Mr. KILDEE. I thank you for your indulgence.

Mr. YOHALEM. In addition to the problems we have been discussing relating to the Bureau of Education for the Handicapped, we are also aware that a number of proposed amendments to Public Law 94-142 have been presented to this subcommittee at this 11th hour. In particular, we have reviewed a packet of amendments proposed by the Education Commission of the States and a number of other organizations representing State officials. We think that it is entirely premature to be discussing major changes in the act. In our view, there is nothing in Public Law 94-142 that cannot be implemented expeditiously. Its provisions build upon constitutional requirements that have been known to the States for some time and have been incorporated in many State laws. Perhaps after Public Law 94-142 has been in effect for a number of years, the various experiences we will have had throughout the country will demonstrate better approaches to serving handicapped children. Improvements might be appropriate at that time.

But at the present time, the problems we see in implementing Public Law 94-142 do not stem from the propriety of the act's requirements. They stem from an old-fashioned resistance to change by a small number of States and school districts. They stem from a lingering unwillingness to recognize that handicapped children have a right to education and to sufficient State and local financial support for this education.

They stem from some local school officials' resistance to the inclusion of parents in the decisionmaking process. And they stem from the historical reticence by BEH and the Office of Civil Rights to enforce compliance with various Federal laws protecting handicapped children. Nonetheless, while there is great diversity in the stages of implementation in the various States, a great many States are now moving to comply with Public Law 94-142 and its September 1978 deadline for provision of full appropriate services.

Therefore, it is our view that the resolution of implementation problems depends not upon amendments to Public Law 94-142, but upon the development of an effective Federal enforcement program that includes strong and clear regulations, systematic monitoring

of actual state practices, on-site compliance reviews and workable procedures to bring non-complying states into compliance.

I want to emphasize the importance of effective enforcement of the new Public Law 94-142 regulations in this scheme. This is the essential mechanism for establishing standards for day-to-day implementation of Public Law 94-142 and for putting all state and local education agencies on notice of what is expected of them under the Act.

Thus, it is our hope that BEH will promptly enforce its new regulations to carry out the intent of Congress. Regulations and an enforcement program, not amendments, are the key to resolving implementation problems at this time.

I would like to discuss briefly a few statutory provisions to demonstrate why this is so.

Section 613 requires each state desiring funds under the Act to submit a plan setting forth the manner in which the state will achieve compliance with the Act's provisions. Section 612(f) requires the states to consult with handicapped individuals, parents of handicapped children and other concerned persons; to provide adequate notice and conduct public hearings; and to provide an opportunity for public comment "prior to adoption of the policies, programs, and procedures required pursuant to the provisions of this section and section 613."

It has been our experience, both in the past under Public Law 93-380 and today as states begin the Public Law 94-142 process, that very few states afford adequate opportunities for concerned persons to participate in the planning process. For example, in some states public notices about state plans have been published in tiny print in the legal column of the newspaper; only a single copy of the plan has been made available for review in one office in the state capital; the draft plans have been made public for the first time on the day of the public hearing; hearings have been held in inaccessible parts of the state; comments were ignored when received.

Public Law 94-142 does not have to be amended to deal with these problems, however. The regulations issued by BEH require the public's participation in the development of state plans and establish clear procedures for implementing the Act's public participation requirements. If these procedures are enforced, effective public participation can be achieved.

Under section 612(6), "the state educational agency shall be responsible for assuring that the requirements of this part are carried out . . ." This provision properly lodges responsibility and accountability with a single state agency. For years, handicapped children throughout this country have been bounced from state agency to agency claiming that the other has responsibility for providing services. Obviously, the result has been that many children are denied all services and their parents are worn down running from the state department of mental health, to vocational rehabilitation, to education, to public welfare, to health, etc.

Public Law 94-142 resolves this very serious problem and rightly places responsibility with the state agency that receives funds under the Act. No amendments are needed to insure implementation of this important provision. But the regulations issued by BEH

on this issue must be enforced to insure that full services are provided for each child, regardless of the types of services needed. Contrary to the assertions of the Education Commission of the States, et al., the vast majority of state education agencies presently have the power to fulfill the Act's mandate. For the rest, that power can be established by state executive or legislative action.

Section 612(5)(C) requires that children be evaluated by non-discriminatory procedures and section 614(a)(5) mandates an "individualized education program" (IEP) for each child in need of special education or related services. Non-discriminatory evaluation procedures are clearly constitutionally mandated, and IEP's are an inseparable part of both the evaluation and free appropriate education program requirements of Public Law 94-142. An evaluation that does not result in an IEP can only lead to the classification of a child, and this Subcommittee has already heard in the hearings held prior to the passage of Public Law 94-142 about the evils of such labeling. The IEP is also the only mechanism for determining which educational program is appropriate for each child. Parental, administrative and, if necessary judicial determinations of appropriateness are impossible unless each child's individual program is specified in writing.

The Education Commission of the States, et al., proposes that Public Law 94-142 be amended to state that the IEP is not a contract for services. They justify this by asserting that without such an amendment, school districts will be far more concerned with protecting themselves from liability than with providing appropriate educational services. Supposedly, districts will "cover" themselves by preparing inadequate IEP's. This argument is absurd. First, most school districts will act in good faith. Second, the Act provides for extensive procedural safeguards under which parents can challenge an inadequate IEP.

But most importantly, the Education Commission of the States' attack on the IEP is really an attack on the Act itself. The whole point of Public Law 94-142 is to make the provision of appropriate educational services to each handicapped child a binding requirement. The IEP simply describes for each child the educational services the school district determines to be appropriate. It necessarily follows that if a child has the right to appropriate educational services, the document describing those services, the IEP, must be binding. Any other result would render the Act meaningless and unenforceable. Thus, the proposed amendment is entirely ill-advised and BEH's regulation on this issure is entirely appropriate.

Mr. KILDEE. I really apologize. It is a rather fast track today. I do have to cast a vote again. If you will bear with me, I will be back again shortly.

[A brief recess was taken.]

Mr. KILDEE. You may proceed again.

Mr. YOHALEM. Third, section 615 mandates extensive procedural safeguards to protect children from arbitrary and inappropriate decisions by school districts. Many of the states in which we are working do not yet have such procedures in place, despite the fact that they have been required by Public Law 93-380 since 1974. A number of other states that do have procedures utilize officials and employees of the agency whose action is being challenged as hear-

ing officers and surrogates, thereby infusing the safeguards with a serious conflict of interest. In addition, many states have failed to set up procedures which are timely and which provide adequate notice to parents of their rights. All of these problems can and must be remedied by enforcement of the Act's mandate and the regulations' criteria for impartiality, timetables for procedures and the minimum content of parental notices. This is the only way to insure that procedural safeguards are available in every state.

The Education Committee of the States, et al., proposed several amendments that will weaken the Act's strong procedural safeguards. Each is entirely inappropriate and should be rejected. First, a proposed amendment broadens the pool of persons who would be eligible to be surrogate parents, by including anyone not directly providing services to a child. This would include, for example, a principal from neighboring school, a teacher within the school, etc. Since it would be a clear conflict of interest for any of these school district employees to be representing children in proceedings challenging the actions of their employer, this proposal undermines the one safeguard intended especially to protect parentless children.

Second, a propsed amendment removes the Act's requirement that state departments of education provide administrative appeal from hearings conducted on the local level. This is justified as necessary to comport with a number of states' laws and practices which do not presently provide for such appeals. But, these appeals are not costly to set up and no state to my knowledge prohibits the creation of such an appeal under these circumstances.

Further, these appeals are an important safeguard in the administrative process. Most parents will not be able to afford a lawyer to go to court. They must be afforded a viable administrative appeal to the state educational agency, which has the authority and expertise to resolve disputes with the school districts. Finally, an administrative appeal will greatly reduce the need for judicial action under the Act. Experience with other government programs has shown that, when there is an opportunity for an administrative appeal, the overwhelming majority of disputes are resolved at the administrative, rather than the judicial, level.

The proposed amendment deleting entirely the requirement that decisions of hearing officers must be binding on all parties and the creation of a judicial right of action for aggrieved parties is entirely without any justification whatsoever.

Fourth, ECS proposed without any justification at all to delete entirely the series of physical safeguards found in Section 613(9) and 614(A) (1) and (2). These sections prohibit supplanting and commingling of Federal funds and require comparability of services and expenditures of Federal funds on excess costs. Enforcement of each of these provisions is important to maintain the physical integrity of the Federal program and target the fund on the population protected by the Act.

The states have had 200 years to provide education to handicapped children and in the absence of this legislation I am afraid they may continue to shirk their responsibilities in this regard. Any further delay would be tragic for the children involved. In addition as a result of Section 504's regulations it is clear that such

a delay in 94-142 would have little effect on the states' obligations to handicapped children.

In closing I would like to thank the subcommittee for its dedicated work on behalf of the nation's handicapped children and for granting me this opportunity to present the Children's Defense Fund's views on problems of implementing Public Law 94-142.

[The statement of Mr. Yohalem follows:]

TESTIMONY OF DANIEL YOHALEM OF THE CHILDREN'S DEFENSE FUND

Mr. Chairman and members of this distinguished subcommittee, thank you for inviting me here to testify today in regard to P.L. 94-142, the Education for All Handicapped Children Act.

I am testifying on behalf of the Children's Defense Fund, a national, nonprofit, public interest organization created in 1973 to address systematically the conditions and needs of children in this country. CDF has gathered evidence and issued reports on specific problems faced by large numbers of these children, including the 1974 nationwide study: *Children Out of School in America*, documenting the ways in which handicapped and other children are systematically denied an education by the nation's public schools. CDF seeks to correct problems uncovered by our research through the monitoring of federal and state administrative policies and practices, litigation, the dissemination of public information, and the provision of legal and technical support to parents and local community groups representing children's interests.

As the attorney responsible for the Children's Defense Fund's special education activities, I want to inform this Committee that the handicapped children we represent throughout this country are counting on full and forceful implementation of P.L. 94-142 when it goes into effect on October 1, 1977. This comprehensive Act sets forth the fundamental rights necessary to insure that all handicapped children receive the free appropriate public education to which they are entitled. As you are very well aware, P.L. 94-142 was not hastily enacted, nor is it a passing experiment in new social theories. This law was passed only after years of public hearings, debate, consultation and investigation. It represents Congress', indeed the country's, best judgment about the essential rights needed to combat centuries of exclusion of handicapped children from the nation's schools. As is clear from the legislative history, it also represents Congress' statement of what the United States Constitution requires for handicapped children. And, lastly, it represents a new and generous federal role in financing educational services for handicapped children, thus helping the states meet their constitutional obligations.

The Children's Defense Fund applauds P.L. 94-142 and the crucial role that you and the Members of this Subcommittee played in the development of this criticially important Act. We see this legislation and Section 504 of the Rehabilitation Act of 1973 as offering the greatest promise for insuring educational programs for this country's handicapped children. We have provided parents throughout the United States with written materials explaining their children's rights under P.L. 94-142 and have advised lawyers as to the Act's various legal mandates. We are also representing in litigation handicapped children who are still, even in 1977, either totally excluded from school or isolated from normal life in segregated programs.

In fact, this past summer we won a major victory on behalf of the class of all handicapped children in the State of Mississippi, enforcing Public Law 93-380 (the predecessor of P.L. 94-142) in a suit against officials of the Mississippi Department of Education. In *Mattie T., et al.* v. *Charles Holladay, et al.*, Civil Action No. DC-7531-S (N.D. Miss., July 28, 1977) Judge Orma R. Smith of the United States District Court for the Northern District of Mississippi granted the plaintiff-children's motion for summary judgment, holding that the defendant Mississippi officials had violated the Education of the Handicapped Act (P.L. 93-380) by failing to adopt sufficient policies and procedures to insure plaintiffs:

> (a) Procedural safeguards, including prior notice and an impartial due process hearing, to challenge decisions regarding their educational evaluation and placement, pursuant to 20 U.S.C. § 1413(a)(13)(A) (Supp. IV, 1974);
>
> (b) A program to locate and identify all handicapped children in the state in need of special education services, pursuant to 20 U.S.C. § 1413(b)(1)(A) (Supp. IV, 1974);

(c) Racially and culturally non-discriminatory tests and procedures used to classify them as handicapped and place them in special education programs, pursuant to 20 U.S.C. § 1413(a)(13)(C) (Supp. IV, 1974); and

(d) Educational programs which are in normal school settings with non-handicapped children to the maximum extent appropriate, pursuant to 20 U.S.C. § 1413(a)(13)(B) (Supp. IV, 1974).

The court ordered the state defendants to file with the court and plaintiffs their Annual Program Plan under P.L. 94-142 for fiscal year 1978, after it has been approved by the federal Bureau of Education for the Handicapped. Plaintiffs are then to be given 30 days to make suggestions or objections to the Plan "related to the relief to be granted by the court as a result of its ruling on the summary judgment motion." The court further ruled that it will give defendants 30 days to respond to plaintiffs' suggestions or objections and then it will issue any further orders necessary for relief in the case.

Mattie T. conclusively establishes that state departments of education have a legal duty to adopt sufficient policies, adequately monitor local school districts, and effectively enforce compliance with the federal education requirements throughout each of their respective states. This decision, the first under the Education of the Handicapped Act, comes at a critical time, as we move into the implementation of P.L. 94-142. It puts states and HEW on notice that the federal courts rightly intend to take Congress seriously by enforcing its excellent legislation. Thus, we urge this Subcommittee to take a strong stand at this time in support of implementation of P.L. 94-142. There must be no waffling by the federal government. The Bureau of Education for the Handicapped (BEH) must now tranform itself from a relatively passive grant-giving agency into a forceful compliance agency in order to fulfill Congress' clear mandate that BEH enforce P.L. 94-142.

Therefore, we call upon this Subcommittee to exercise its oversight powers to insure that BEH effectively fulfills the role this Subcommittee and the Congress has given it, by requiring BEH to commit sufficient staff and resources to develop firm compliance standards, adequately monitor the states' actual (not just paper) compliance activities, and vigorously enforce the Act's requirements. In our view BEH has failed to carry out its responsibilities in the past to protect the rights of handicapped children. In far too many instances, BEH has allowed states to avoid compliance with federal law. In fact, had BEH more forcefully enforced P.L. 93-380, the states would now be in a far better position to comply with P.L. 94-142, and millions of children would have been spared the continuing tragic consequences of exclusion from school, misclassification, and segregation. The need for effective action by BEH is long overdue.

We are also aware that a number of proposed amendments to P.L. 94-142 have been presented to this Subcommittee at this eleventh hour. In particular, we have reviewed a packet of amendments proposed by the Education Commission of the States and a number of other organizations representing state officials. We think that it is entirely premature to be discussing major changes in the Act. In our view, there is nothing in P.L. 94-142 that cannot be implemented expeditiously. Its provisions build upon constitutional requirements that have been known to the states for some time and have been incorporated in many states' laws. Perhaps after P.L. 94-142 has been in effect for a number of years, the various experiences we will have had throughout the country will demonstrate better approaches to serving handicapped children. Improvements might be appropriate at that time.

But at the present time, the problems we see in implementing P.L. 94-142 do not stem from the property of the Act's requirements. They stem from an old-fashioned resistance to change by a *small number* of states and school districts. They stem from a lingering unwillingness to recognize that handicapped children have a right to education and to sufficient state and local financial support for this education. They stem from some local school officials' resistance to the inclusion of parents in the decision-making process. And they stem from the historical reticence by BEH and the Office of Civil Rights to enforce compliance with various federal laws protecting handicapped children. Nonetheless, while there is great diversity in the stages of implementation in the various states, a great many states are now moving to comply with P.L. 94-142 and its September 1978 deadline for provision of full appropriate services.

Therefore, it is our view that the resolution of implementation problems depends not upon amendments to P.L. 94-142, but upon the development of an effective federal enforcement program that includes strong and clear regulations, systematic monitoring of actual state practices, on-site compliance reviews and workable procedures to bring non-complying states into compliance. *I want to emphasize the importance of effective enforcement of the new P.L. 94-142 regulations in this*

scheme. This is the essential mechanism for establishing standards for day-to-day implementation of P.L. 94-142 and for putting all state and local education agencies on notice of what is expected of them under the Act.

State and local special education officials have repeatedly told us that they would welcome a clear and consistent statement of their obligations under the federal law. Many who are relying on P.L. 94-142 to move their otherwise recalcitrant departments of education have confided in us that their major problems stem from administrative changes in federal standards and from *ad hoc* waivers *granted* by federal agencies, and *not* from the substantive requirements of the Act. They say it was the repeated federal shifts in policy over the past, during development of the Section 504 regulations and enforcement of P.L. 93-380, that has helped to create resistance to the growth of special education programs and protections in the states. These shifts allowed many state and local officials, faced with competing resource demands, to believe that they need not provide full educational services to handicapped children. They doubted the federal government's commitment to these children.

Thus, it is our hope that BEH will promptly enforce its new regulations to carry out the intent of Congress. *Regulations and an enforcement program, not amendments, are the key to resolving implementation problems at this time.*

I would like to discuss briefly a few statutory provisions to demonstrate why this is so.

Section 613 requires each state desiring funds under the Act to submit a plan setting forth the manner in which the state will achieve compliance with the Act's provisions. Section 612(f) requires the states to consult with handicapped individuals, parents of handicapped children and other concerned persons; to provide adequate notice and conduct public hearings; and to provide an opportunity for public comment "prior to adoption of the policies, programs, and procedures required pursuant to the provisions of this Section and Section 613."

It has been our experience, both in the past under P.L. 93-380 and today as states begin the P.L. 94-142 process, that very few states afford adequate opportunities for concerned persons to participate in the planning process. For example, in some states public notices about state plans have been published in tiny print in the legal column of the newspaper; only a single copy of the plan has been made available for review in one office in the state capital; the draft plans have been made public for the first time on the day of the public hearing; hearings have been held in inaccessible parts of the state; comments were ignored when received.

P.L. 94-142 does *not* have to be amended to deal with these problems, however. The regulations issued by BEH require the public's participation in the development of state plans and establish clear procedures for implementing the Act's public participation requirements. If these procedures are enforced, effective public participation can be achieved.

Under Section 612(6) "the state educational agency shall be responsible for assuring that the requirements of this part are carried our * * * " This provision properly lodges *responsibility* and *accountability* with a single state agency. For years, handicapped children throughout this country have been bounced from state agency to agency claiming that the other has responsibility for providing services. Obviously, the result has been that many childrn are denied all services and their parents are worn down running from the state department of mental health, to vocational rehabilitation, to education, to public welfare, to health, etc.

P.L. 94-142 resolves this very serious problem and rightly places responsibility with the state agency that receives funds under the Act. No amendments are needed to insure implementation of this important provision. But the regulations issued by BEH on this issue must be enforced to insure that full services are provided for each child, regardless of the types of services needed. Contrary to the assertions of the Education Commission of the States, *et al.*, the vast majority of state education agencies presently have the power to fulfill the Act's mandate. For the rest, that power can be established by state executive or legislative action.

Section 612(5)(C) requires that children be evaluated by non-discriminatory procedures and Section 614(a)(5) mandates an "individualized education program" (IEP) for each child in need of special education or related services. Nondiscriminatory evaluation procedures are clearly constitutionally mandated, *and IEPs are an inseparable part of both the evaluation and free appropriate education program requirements of P.L. 94-142.* An evaluation that does not result in an IEP can only lead to the classification of a child, and this Subcommittee has already heard in the hearings held prior to the passage of P.L. 94-142 about the evils of such labeling. The IEP is also the only mechanism for determining which educational program is appropriate for each child. Parental, administrative and, if necessary, judicial deter-

minations of appropriateness are impossible unless each child's individual program is specified in writing.

Despite the clear mandate of P.L. 94-142 and its predecessor P.L. 93-380, poor and minority children are still being overclassified mentally retarded as a result of discriminatory evaluation procedures. For example, we learned through discovery in the *Mattie T.* case that black children throughout the State of Mississippi are classified mentally retarded at a rate more than three times that for white children.

It is therefore essential that BEH enforce its regulation requiring that evaluations include: information about a child's abilities in the class, at home and in the community; medical screening; extensive parent participation; and only those standardized tests that have been properly validated.

BEH should also provide guidance to the states on preparation of IEPs. A clear statement of the types of program information required by IEPs will eliminate any possible confusion about their purpose and over-estimates of their costs.

The Education Commission of the States, *et al.*, proposes that P.L. 94-142 be amended to state that the IEP is not a contract for services. They justify this by asserting that without such an amendment, school districts will be far more concerned with protecting themselves from liability than with providing appropriate educational services. Supposedly, districts will "cover" themselves by preparing inadequate IEPs. This argument is absurd. First, most school districts will act in good faith. Second, the Act provides for extensive procedural safeguards under which parents can challenge an inadequate IEP.

But most importantly, the Education Commission of the States' attack on the IEP is really an attack on the Act itself. The whole point of P.L. 94-142 is to make the provision of *appropriate* educational services to each handicapped child a binding requirement. the IEP simply describes for each child the educational services the school district determines to be appropriate. It necessarily follows that if a child has the right to appropriate educational services, the document describing those services, the IEP, must be binding. Any other result would render the Act meaningless and unenforceable. Thus, the proposed amendment is entirely ill-advised and BEH's regulation on this issue is entirely appropriate.

Section 615 mandates extensive procedural safeguards to protect children from arbitrary and inappropriate decisions by school districts. Many of the states in which we are working do not yet have such procedures in place, despite the fact that they have been required by P.L. 93-380 since 1974. A number of other states that do have procedures utilize officials and employees of the agency whose action is being challenged as hearing officers and surrogates, thereby infusing the safeguards with a serious conflict of interest. In addition, many states have failed to set up procedures which are timely and which provide adequate notice to parents of their rights. All of these problems can and must be remedied by enforcement of the Act's mandate and the regulations' criteria for impartiality, timetables for procedures and the minimum content of parental notices. this is the only way to insure that procedural safeguards are available in every state.

The Education Commission of the States, *et al.*, proposes several amendments that will weaken the Act's strong procedural safeguards. Each is entirely inappropriate and should be rejected. First, a proposed amendment broadens the pool of persons who would be eligible to be surrogate parents, by including anyone not directly providing services to a child. This would include, for example, a principal from a neighboring school, a teacher within the school, etc. Since it would be a clear conflict of interest for any of these school district employees to be representing children in proceedings challenging the actions of their employer, this proposal undermines the one safeguard intended especially to protect parentless children.

Second, a proposed amendment removes the Act's requirement that state departments of education provide administrative appeals from hearings conducted on the local level. This is justified as necessary to comport with a number of states' laws and practices which do not presently provide for such appeals. But, these appeals are not costly to set up and no state to my knowlege prohibits the creation of such an appeal under these circumstances. Further, these appeals are an important safeguard in the administrative process. Most parents will not be able to afford a lawyer to go to court. They must be afforded a viable administrative appeal to the state educational agency, which has the authority and expertise to resolve disputes with the school districts. Finally, an administrative appeal will greatly reduce the need for judicial action under the Act. Experience with other government programs has shown that, when there is an opportunity for an administrative appeal, the overwhelming majority of disputes are resolved at the administrative, rather than the judicial, level.

Third, a proposed amendment deletes entirely Section 615(e), which provides that decisions of hearing officers must be binding on all parties (subject only to a

specified appeal) and creates a judicial right of action for aggrieved parties. *This sweeping deletion of two of the Act's most important safeguards is proposed without any justification at all.* Indeed, since both provisions are the essential checks on the P.L. 94-142 placement process and are mandated by the due process clause of the United States Constitution as well, there cannot be any justification for their deletion.

The last example of an implementation problem that can be resolved by enforcement of the regulations, rather than amendment, is the series of fiscal safeguards found in Section 613(9) and 614(a)(1) and (2). These Sections prohibit states from commingling federal funds with state and local funds, and from using federal funds with state and local funds, and from using federal funds to supplant (instead of supplement) state and local funds presently supporting special educational services. These provisions also require that P.L. 94-142 funds be expended *only* on those costs of educating handicapped children that are in excess of the costs of regular education and on special education services that are at least comparable in quality to regular programs not receiving these funds.

Implementation of similar provisions in other educational programs has typically not been effectively monitored or enforced by the federal government. In a number of situations we have investigated, Title I of the ESEA and P.L. 93-380 funds were being used either for general education purposes or to supplant existing state and local funds or to provide wholly inadequate programs. Enforcement of each of these provisions is vitally important to maintain the fiscal integrity of the federal program and target the federal funds on the population protected by the Act. The Education Commission of the States, *et al.*, proposes to delete all of these protections, but offers no justification at all for this extreme position. Because of the great importance of these provisions, this proposed amendment should be rejected.

In closing, I would like to thank the Subcommittee for its dedicated work on behalf of the nation's handicapped children and for granting me this opportunity to present the Children's Defense Fund's views on problems of implementing P.L. 94-142.

Mr. KILDEE. Thank you very much, Mr. Yohalem for your testimony.

I think our next witness is Mrs. Dee Everitt, member of NARC Government Affairs Committee.

STATEMENT OF DEE EVERITT, MEMBER OF THE GOVERNMENTAL AFFAIRS COMMITTEE OF THE NATIONAL ASSOCIATION FOR RETARDED CITIZENS

Mrs. EVERITT. I am Dee Everitt. I am the parent of a multiple handicapped, young, adult daughter and a member of the Governmental Affairs Committee of the National Association for Retarded Citizens. I have been actively involved for many years in the State of Nebraska in seeking expanded and improved educational services for mentally retarded and other handicapped children at the State and local level.

At the end of my short formal presentation I have just a few brief personal remarks I would like to make.

Thanks to you, Mr. Chairman and the members of this committee, our fondest hopes and dreams were realized almost 2 years ago when Public Law 94-142, the Education for All Handicapped Children Act, was enacted into law. Let me assure you that was a great day for parents of handicapped children. Our joy was tempered somewhat by the realization that much work needed to be done to fully realize the goals of Public Law 94-142. We realized that the same forces that had resisted efforts to educate all of our children in the past would still need guidance and monitoring to assure full compliance with the act.

We would now like to address three specific issues surfaced by the States as major problems with Public Law 94-142. These problems are:

1. The cost of special education and the Federal Government role in financing such education;
2. The State education agency role in "supervising" all services received by handicapped children; and
3. The individual education program as a contract for services.

FEDERAL ROLE IN FINANCING SPECIAL EDUCATION

It is very important to establish from the outset the fact that Public Law 94-142 did not mandate, for the most part, any additional services which were not already required by States through State law, regulation or court order. Regardless of the passage of the Education for All Handicapped Children Act, the vast majority of States already had mandatory special education laws in place. Additionally, some States have been under court order for a few years now to educate all handicapped children. The argument that Public Law 94-142 places substantial new financial burdens on State and local education agencies is simply unfounded.

Current critics of the law supported it throughout its legislative history because of the strong financial aid promised by the act. Some supporters were, and continue to be, leery of the Congress willingness of fully support the authorization levels in the act. The Congress has, however, fully met its promises in the fiscal year 1978 and fiscal year 1979 appropriations process in regards to the State formula grant program.

It will obviously be more difficult every year to meet the authorization levels. The Congress must continue to set the example for State legislatures in fulfilling its role to provide adequate dollars to finance education programs. You are to be congratulated for your past efforts and strongly encouraged to continue. We pledge our support in this effort.

STATE EDUCATION AGENCY ROLE

The National Association for Retarded Citizens views that provision of Public Law 94-142 which requires the State education agency to assume general supervision of special education programs which are provided by other State agencies as being most important. In every State, a substantial number of mentally retarded children reside in public institutions. Many of these institutions are notorious for providing grossly inadequate programs. This is especially true of severely and profoundly retarded children who, in the past, have been fortunate to have access to a toy, let alone an appropriate eductional program. These institutions are almost all administered by State agencies other than the State education agency.

Section 612(6) of the act must be fully implemented if these children are to receive full educational services. Without the involvement of the State education agency in the development and supervision of those programs, the chances for compliance are very slim. We urge this committee to retain this important provision.

Gentlemen, in the past people such as those I have been primarily listening to this morning testify were the same kind of people who kept my daughter from receiving an adequate educational program. I have had heard the same excuses for years, not enough money, no staff, et cetera, et cetera. Briefly, in my own words, I would like to relate to you on a more personal basis what has happened in the past and the impact this law is going to have on handicapped kids and their parents.

For 16 years my daughter was excluded from a public school program. She spent 3 years being shifted from units for the physically handicapped to the mentally handicapped and to a homebound program. These programs were only afforded to her on a 3-hour-a-day basis. No programing at all was being done and she was left to sit. Next we placed her in a local school funded by parents.

The staff was inadequate, poorly trained, underpaid. Parents' time was consumed with finding funding to keep the doors open. We then placed her in a church-sponsored residential school which reluctantly accepted her. They ordinarily did not accept multihandicapped children. After 3 years of less than an appropriate program and a nearly bankrupt family, we brought her home.

Oftentimes I become very bitter because my daughter was not provided a free quality education the same as my three sons were being provided.

My whole point in telling you of my experience to bring into proper perspective what this law means to the handicapped kids and their parents. The assurance of receiving an appropriate individualized education program with professionally trained staff and support sevices will hopefully prevent these kinds of frustrating situations. I realize now what Public Law 94-142 could have meant to my daughter in terms of what she would be capable of doing today and her degree of independence.

On behalf of all parents of the handicapped I ask you not to change or tamper with this much needed piece of legislation. Thank you.

[The statement of Mrs. Everitt follows:]

PREPARED STATEMENT OF MRS. EVERITT, MEMBER, THE NATIONAL ASSOCIATION FOR RETARDED CITIZENS, GOVERNMENTAL AFFAIRS COMMITTEE

Mr. Chairman, I am Mrs. Dee Everitt. I am the parent of a multiply handicapped, young adult daughter and a member of the Governmental Affiars Committee of the National Association for Retarded Citizens. I have been actively involved for many years in the State of Nebraska in seeking expanded and improved educational services for mentally retarded and other handicapped children at the State and local level.

The National Association for Retarded Citizens, as you know, is a large organization which represents our nation's six million mentally retarded citizens. Our members have played a large role over the past twenty-five years in obtaining educational services for handicapped children in public schools. Our organization has also spearheaded court actions to protect the rights of handicapped children to a free, appropriate public education where efforts in State legislatures and State and local governments have failed to secure such rights.

Thanks to you, Mr. Chairman and the members of this Committee, our fondest hopes and dreams were realized almost two years ago when Public Law 94-142, The Education for All Handicapped children Act was enacted into law. Let me assure you that was a great day for parents of handicapped children. Our joy was tempered somewhat by the realization that much work needed to be done to fully realize the goals of Public Law 94-142. We realized that the same forces that had resisted

efforts to educate all of our children in the past would still need guidance and monitoring to assure full compliance with the Act.

We are now just a few days away from the implementation of major provisions of the Act. As we predicted, strong forces representing various components of State government have already proposed major changes in the Act—changes which, in our opinion, would substantially jeopardize many of the important objectives of the Act. Before commenting specifically on some of these proposals, the National Associaiton for Retarded Citizens wishes to focus the attention of the Committee on a most critical issue.

Simply stated, those individuals and organizations most directly affected by this Act, namely handicapped persons and their parents, consumer and professional organizations which represent handicapped citizens, and educators continue to strongly support the Act as written and advocate for full implementation for at least one or two years before any legislative changes are made. Let us try to see if it works before changing it!

Another important consideration is the apparent sound position being taken by the United States Office of Education in implementing the Act. The final regulations published in August appear to take a very common sense approach. Some of the changes sought by the States have obviously been solved through regulatory language. Additionally, the efforts of the Bureau of Education for the Handicapped are to be commended as they are working very closely with all States to achieve compliance. To the best of our knowledge, only one State appears to be having difficulty in submitting an acceptable State Plan for fiscal year 1978. If this is correct, obviously implementation problems as articulated by the States cannot be all that horrible.

We would now like to address three specific issues surfaced by the States as major problems with Public Law 94-142. These problems are:

1. The cost of special education and the Federal Government role in financing such education;
2. The State Education Agency role in "supervising" all services received by handicapped children; and
3. The individual education program as a contract for services.

FEDERAL ROLE IN FINANCING SPECIAL EDUCATION

It is very important to establish from the outset the fact that Public Law 94-142 did not mandate, for the most part, any additional services which were not already required by States through State law, regulation or court order. Regardless of the passage of The Education for All Handicapped Children Act, the vast majority of States already had mandatory special education laws in place. Additionally, some States have been under court order for a few years now to educate all handicapped children. The arugment that Public Law 94-142 places substantial new financial burdens on State and local education agencies is simply unfounded.

Current critics of the law supported it throughout its legislative history because of the strong financial aid promised by the Act. Some supporters were, and continue to be, leery of the Congress' willingness to fully support the authorization levels in the Act. The Congress has, however, fully met its promises in the fiscal year 1978 and fiscal year 1979 appropriations process in regards to the State Formula Grant Program.

It will obviously be more difficult every year to meet the authorization levels. The Congress must continue to set the example for State Legislatures in fulfilling its role to provide adequate dollars to finance education programs. You are to be congratulated for your past efforts and strongly encouraged to continue. We pledge our support in this effort.

STATE EDUCATION AGENCY ROLE

The National Association for Retarded Citizens views that provision of Public Law 94-142 which requires the State Education Agency to assume general supervision of special education programs which are provided by other State agencies as being most important. In every State, a substantial number of mentally retarded children reside in public institutions. Many of these institutions are notorious for providing grossly inadequate programs. This is especially true of severely and profoundly retarded children who, in the past, have been fortunate to have access to a toy, let alone an appropriate educational program. These institutions are almost all administered by State agencies other than the State Education Agency.

Section 612(6) of the Act must be fully implemented if these children are to receive full educational services. Without the involvement of the State Education Agency in the development and supervision of those programs, the chances for

compliance are very slim. We urge this Committee to retain this important provision.

INDIVIDUAL EDUCATION PROGRAMS

From a parent's perspective, the provision in the Act which requires the development of an individualized education program for each handicapped child guarantees the role of the parent in the education process. Is it possible that the Act's detractors are using the excuse of potential legal action based on Individualized Education Programs as a tactic to keep parents from participating in the process? We certainly hope not! The concern expressed by the States has been obviated by the final regulations. This is no longer an issue.

CONCLUSION

The National Association for Retarded Citizens urges this Committee not to consider any of the suggested changes made by The Education Commission of the States, The National Governors' Conference, The National Conference of State Legislatures, The National Association of State Boards of Education and The Council of Chief State School Officers. The strong support by the United States Office of Education, special educators, and consumer organizations for full implementation of the Act as currently written is ample evidence that no changes should be made at this time.

We do, however, agree that we all must work closely together to reach our ultmate goal, a free, appropriate education for each and every handicapped child in our nation. This requires close monitoring by all interested parties, strong Federal, State and local cooperation (particularly in appropriating adequate financial resources) and an earnest effort by everyone to get the job done. The National Association for Retarded Citizens certainly pledges its resources to accomplish this worthy goal.

Again, I am appreciative of this opportunity to present my views to this Subcommittee and thank you in advance for any consideration that may be given toward their incorporation into legislative amendments. Thank you.

Mr. KILDEE. Thank you very much. As a comment, my own experience when we passed the mandatory special education in Michigan was that it would no' have passed if it had not been for parental advocacy. I number them among my friends. If we were to have depended on the superintendent of schools in the State of Michigan we would never have passed the bill. I told this to other people and perhaps some of you have heard it too but just before I was chairman of the Education Subcommittee of the appropriations, just before the bill was to go into effect, the superintendents began to realize that the legislature was serious and this was a mandate and money might follow, but the mandate existed whether the money followed or not.

Most of the superintendents from my particular House district at that time in the legislature called me, imploring me first of all to delay the bill and also to change the age to 0 to 25 standards we had put in the bill. They were saying, "Give us a year or two delay," because they finally realized that we were serious, "and then make it from age 5 or 6 through 16 or 18." They did not want to take the other age groups. But the legislature did not back down on that. So, it does not surprise me at times when some of the people to whom we have entrusted the education of our children very often are unwilling to undertake that task.

Interestingly enough also I was chief sponsor of the first bill for the handicapped in housing in Michigan, which prohibited discrimination against the handicapped. We merely added this language to our own housing statute. Whereas before we had race, creed, color, or national origin, I expanded the list to include age, marital status, and the physically or mentally handicapped. The very agency of government that was set up by our Michigan constitution

to defend civil rights fought me more than any other group, that is the Michigan Civil Rights Commission, and we beat them down.

They said they could not work under the law. They are. People are getting housing now that were not getting housing because they were handicapped. Very often it is strange that the very people who have been assigned by society to fulfill certain roles become extremely conservative and do not want to have added to their roles any additional responsibilities. That is why I think parental advocacy through the legislative process is what has brought about what we have achieved to date.

I found your testimony very excellent, and I really have no questions. I apologize for the interruption for the record roll calls in the House. We will be seeing each other more. I hope to work with Chairman Brademas on this bill. Thank you very much.

[Whereupon, at 1:45 p.m. the hearing adjourned, to reconvene at 9:30 a.m., Tuesday, September 27, 1977.]

EDUCATION FOR ALL HANDICAPPED CHILDREN ACT

TUESDAY, SEPTEMBER 27, 1977

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON SELECT EDUCATION OF THE
COMMITTEE ON EDUCATION AND LABOR,
Washington, D.C.

The subcommittee met, at 9:30 a.m., in room 2257, Rayburn House Office Building, Hon. John Brademas (chairman of the subcommittee) presiding.

Members present: Representatives Brademas, Kildee, Jeffords, and Pressler.

Staff present: Jack G. Duncan, counsel; Thomas Wolanin, deputy staff director; Martin LaVor, minority senior legislative associate; and Moya Benoit, secretary.

Mr. BRADEMAS. The Subcommittee on Select Education will come to order for the purpose of continuing oversight hearings on Public Law 94-142, the Education for All Handicapped Children Act.

Public Law 94-142 was passed by Congress in 1975 to help schools pay the extra costs of educating handicapped children. Now that the regulations on the law are about to take effect, it is timely that we hold these hearings to understand better the concerns of those who are responsible for the implementation of the act and those who will be affected by the new mandate guaranteeing an educational opportunity for handicapped children.

At our hearing yesterday, we had witnesses representing various state governments and agencies as well as organizations representing handicapped people. Today, we shall hear testimony from the administration, from parents of handicapped children and, again, from individuals representing State governments.

As our first witness this morning I would like to welcome Ernest Boyer, U.S. Commissioner of Education, accompanied by William A. Blakey, Deputy Assistant Secretary for Legislation—Education—HEW; Dr. Edwin W. Martin, Deputy Commissioner, Bureau of Education for the Handicapped, U.S. Office of Education, HEW; Dr. Albert L. Alford, Assistant Commissioner for Legislation, U.S. Office of Education, HEW.

Dr. Boyer, we are very pleased to welcome you and your associates to our hearing this morning.

STATEMENT OF ERNEST BOYER, COMMISSIONER, OFFICE OF EDUCATION, ACCOMPANIED BY EDWIN W. MARTIN, JR., DEPUTY COMMISSIONER, BUREAU OF EDUCATION FOR THE HANDICAPPED, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Mr. BOYER. Thank you very much. Mr. Chairman, I wish to thank you for the opportunity to comment on Public Law 94-142. I should like at the outset to make very clear the position of the Office of Education and this administration regarding this legislation. In our view we are talking about children today.

We believe the legislation that provides education for all handicapped children is long overdue. We believe we have a social obligation to see that this legislation moves forward and is implemented properly. I wish to make it clear that I am delighted that during my tenure it is fortuitous that we do have the privilege of moving forward with this law. I would like, Mr. Chairman, to summarize first steps we have taken in the Office of Education to fulfill the mandates of the law.

First: We have had approved all State plans for the years 1975, 1976, 1977 and currently we have received plans for 1978 from all but one of the States or territories. These plans, as you know, call for new procedures in identifying the handicapped and developing new process protections and all of the other refinements that are required in the legislation and that will make the social commitment workable.

I should say parenthetically that as of February 1977, using the more refined population counts, we now have 3,600,000 who are qualifying under the new legislation. The first step then is the approval of State plans.

Second. We have been monitoring the State progress in the implementation of these plans. Our staff members have visited 25 States and over 100 local school districts and we plan for the remainder of this year to visit the 25 additional States. These visits are not pro forma, Mr. Chairman. We submit detailed reports to the States, trying to make sure that their plans fall in line with legislative and program expectation.

While many changes have been proposed and intense discussions have been carried on, I think it should be made a matter of record that we have not received a single complaint from any State or administration regarding the procedures and the processes that were used in carrying on these monitoring visits.

Third: We have prepared new regulations, which has not been an easy assignment, but I believe that the record will show and those who participate will agree that arrangements used in preparing these new regulations have been something of a model. There has been the broadest participation. There have been dozens of meetings, including regional meetings, across the Nation involving thousands of people. We did publish tentative regulations, after this widespread participation, and received over 1,600 comments which ranged from a few paragraphs to literally dozens of pages. These were read with great care.

It is our view, Mr. Chairman, that the final regulations which were published August 23 of this year not only were consistent

with the law but were sensitive to the major concerns of those who have participated in the open forums and written responses.

Fourth: We have continued the consultation even since the publishing of those regulations. We have in recent weeks had meetings with delegates from the National Conference of State Legislators, the Governors' Conference, Education Commissions of the States and other bodies, and interested groups that have appeared before this body. We certainly understand the necessity of maintaining this open conversation, the purpose being to make sure that the legislation is going to fulfill the mandates that are intended, and will be responsive.

Now in all of our discussions there have been literally dozens of problems raised. I will cite just three and they are not unfamiliar to you. First of all, the money issue has constantly been front and center. There is great concern that P.L. 94-142 will not be adequately supported and in the end we will have promises unfulfilled.

I am pleased that the fiscal year 1977 appropriation provided an additional $300 million and that the fiscal year 1978 appropriation is in excess of $500 million.

I think it is fair to report to this committee and for the record that it has been the view of the administration that we are here to be a partner; and that we cannot agree that unless this is primarily assumed to be a federally funded venture it will not be fulfilled. In our view we are here to assist both in regularizing the process and in providing a percentage of additional support, but clearly the prime responsibility continues to remain with the States, given the fact that it is a social obligation, and also the courts have with regularity defined this as an obligation of the States.

This is not to be unmindful; it is just to clear the record as to how the partnership is to move this important social legislation forward.

The second major item, at least in the early days of our discussions, was the suggestion that the Federal statute was competing with State statutes. I do not want to trouble you here with a litany of the examples. In my written testimony I did give three examples in some detail and have illustrated how through consultation those identified conflicts seem not to be real or evaporated or were administratively modifiable. I might say again that we have agreed with the committee and the legislature that the primary responsibility for the implementation of this should be with the State education agency. We believe that it is entirely possible in every State we have investigated to see to it that that is achievable so that we don't have a conflicting or ambiguous structure in the delivering of this mandate.

The third area I note is the individualized education plan. There have been many questions raised about whether this takes the form of a contract and exactly what it means to develop an individual plan for each child.

While the law made clear that this was not to be viewed as a contract, we in the regulations repeated again and tried to illustrate exactly how this law, that is the individualized education plan, was viewed as an arrangement to provide additional service but was not to be construed as a contract in which certain predicted outcomes were to be expected or for which the school might be held accountable.

Now let me close my introductory remarks, Mr. Chairman, by commenting on the issue of whether amendments should be launched or introduced. I have to tell you that I have spent more time on education for the handicapped than on any other single program in the Office of Education since I have come, and among the considerations was the issue of whether amendments should be introduced at this time. We went over with great care all of the proposals, and it was our considered judgment that this is not the time to introduce additional amendments.

It seems very clear to me that the requirement now is to move into the implementation of this law and on the strength of that experience to determine whether refinements might be possible. I firmly believe if we were to seek amendments and defer the implementation, if I were to come back to you one year from today we would be talking about precisely the same issue. The issue before us, in my opinion, is our obligation to move forward and out of that experience sift the fears from actual problems and then with more careful targeting identify what improvements might be made.

I conclude, Mr. Chairman, by saying that we believe deeply that this is a piece of legislation that is overdue. We remain sensitive to those who must carry on the awsome responsibility of implementing it but I remain confident if we move aggressively and wisely we will be able to see social progress here in the name of children who for too long have been overlooked. I welcome any comments you may have regarding what we have done or what you think we should do in fulfilling our responsibilities.

[The statement of Mr. Boyer follows:]

STATEMENT BY ERNEST L. BOYER, U.S. COMMISSIONER OF EDUCATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Mr. Chairman, members of the Subcommittee, I welcome the opportunity to appear before you to report to you on our activities in implementing the new amendments to the Education of the Handicapped Act, enacted as P.L. 93-380 and P.L. 94-142, and to share with you our perspective on some of the issues which have been raised in public discussions on the legislation. It is hard for me to accept that we have taken so long as a Nation to arrive at a public policy where we agree to help those whose needs are the greatest. I would like to begin by congratulating you and your colleagues for the leadership efforts of the legislative branch in bringing about equal educational opportunity for our disabled citizens.

Since I have been Commissioner, I have spent more time considering educational programming for handicapped children than on any other single issue. I feel fortunate that my term as Commissioner comes as we attempt to implement this law and these principles. While I recognize that the next few years will be difficult ones, as we struggle as a Nation to live up to our principles, I believe so strongly that meaningful access to appropriate education must be provided for each person whether handicapped or not, that I look forward to the challenge.

I feel we are making good progress on implementing the recent amendments. We have negotiated with every State, frequently through several iterations, and ultimately have been able to approve State Plans in 1975, 1976, and 1977 which have resulted in States adopting new policies and procedures for finding and identifying handicapped children, for providing new "due process" protections under the law, for eliminating practices of excluding handicapped children from school programs, and in general for putting into place programs which will lead to a free and appropriate public education for each handicapped child. The States have recently completed a report to us which for the first time presents a careful accounting of the numbers of children who are now enrolled in special education programs, approximately 3.6 million children as of February 1977.

To monitor the States' progress in implementing these new requirements of the Education of the Handicapped Act, we have conducted numerous regional and national training and technical assistance sessions and we have visited and careful-

ly examined the policies and procedures of 25 States and more than 100 local education agencies. This year we will visit the remaining 25 States, and an additional sample of local programs.

Each of these State visits has led to a detailed report and recommendations to the chief executive officer of that State's Education Agency. Where our visit disclosed that full implementation of the law would not be possible by the scheduled dates for compliance, we have prepared a list of necessary changes and corrections, and the States have been required to report on actions taken to correct such deficiencies. These visits have resulted in "child-find" activities being extended on a state-wide basis as opposed to being limited to certain areas, have resulted in state-wide training of local officials concerning "due process" guarantees, and similar remedial actions. I am happy to report to you Mr. Chairman, that although these visits necessarily have caused State agenices to alter practices, we have not received a single complaint about the manner in which such visits have been conducted by our professional staff.

With regard to the issuing of regulations for the new amendments, the Bureau of Education for the Handicapped has conducted a process which has been described by observers, both consumers and providers of services, as exemplary. There has been substantial public involvement. Before a first version of the regulations was drafted our staff met with more than 1000 people in regional meetings across the country to identify issues, and hear from the public its impressions of major concerns about the legislation. Task forces involving almost 200 representatives of varying groups interested in the regulations then drafted 12 concept papers, one on each main issue of the regulations. Finally from these papers the first version of the regulations was drafted; and so the public, State and local officials, and others had the chance to have "input" before rather than after the regulations were drafted.

The proposed regulations were published according to the timelines prescribed in the statute. There was an extensive public comment period, involving regional hearings and receipt of written comments. Over 1,600 written comments were received ranging from a few lines to one eighty-five page review. While this volume has caused an enormous burden on staff, we did prepare a preamble to the regulations in which we responded to each class of issue which was raised, telling how we resolved the problem. The final regulations were published on August 23.

Now, I would like to focus on some of the issues which have been raised about the statute itself. We have been carefully following the public comments and testimony on the new requirements and have in fact encouraged such discussions. We have supported a number of discussion meetings involving such groups as the National Conference of State Legislators, the National Governors' Conference, the Education Commission of the States, the National School Boards Association, and groups of education officials, teachers, parents and disabled people. While there have been many concerns voiced, we have also observed that the discussions have helped to reduce some anxieties, and to focus much of the discussion into hopefully constructive approaches to solutions. I feel that legislation such as the Education of the Handicapped Act, which attempts to bring about remedies to historic societal abuses, inevitably is controversial in some quarters, and by its nature creates dislocations in the "status quo" which are upsetting.

While there are a number of items which have been raised by a given State, group or person, we feel there are several broad areas which have been identified. These include: concern over the costs which will be associated with providing special education to children who are not now receiving such programs; concern over provisions of the Federal law which differ from State law or practice, particularly in the area of the responsibility of the State Education Agency for general supervision of the programs of other agencies, and in the area of due process guarantees; and concerns over the provisions relating to the individualized education programs. There have also been recommendations suggesting changes in the present requirement for counting children receiving special education services on October 1 and February 1, and averaging the numbers obtained in the two counts. In addition, another potential problem area is providing for some delivery of services to children in private schools in States where State Constitutions may bar the development of appropriate programs.

We have attempted to consider each of these issues, and, where appropriate, make changes of clarifications in the final regulations. They warrant our further close attention in the coming year.

We do appreciate the concern of some local and State officials over the costs of providing appropriate special education programs. We do not, however, support the position that such programs cannot be offered unless the Federal Government pays a substantial percentage of the costs. We are pleased that the budget and appropriations process has supported the formula now in the law—resulting in approximate-

ly $300 million for these purposes in Fiscal Year 1977, and approximately $550 million in Fiscal 1978. Although we favor a Federal role in support of programming for handicapped children, we recognize that 48 of the 50 States already have statutes providing for the education of handicapped children, and court decisions have uniformly found that States must provide education for their handicapped children on an equitable basis. We feel, therefore, that the funding under the Federal statute must be seen as assisting the States with their current responsibilities and not imposing a totally new Federal fiscal or programmatic burden.

In the area of conflict between State and Federal law, we have had limited success in receiving carefully documented presentations by individual States of the specific State statutes or constitutional provisions which absolutely prohibit compliance with the Federal law, and which are meritorious enough in their own right to justify waiver or amendment of the current statute.

Let me give you some examples of experiences we have had. In one State a question was raised about the inability to provide a State level appeal after a local hearing. It was allegedly prohibited by State law. In later discussions with the State officials it was discovered that they could have hearings about serious matters or compliance with State policies. It was agreed that this mechanism might be used to establish State level hearings between local hearings and appeals to the courts as provided in the State statute.

In another instance, the issue is that general supervision by the State Educational Agency, as mandated by P.L. 94-142, is not possible because of the strong role of local school boards in that State. However, State Education Agency officials report that the State Constitution and State statutes have similar words concerning responsibility and policy supervision for education in describing the role of local school boards, the role of the State Commissioner of Education, and the role of the State Board of Education, leading at least to the possibility that a solution might be found if all were willing.

In one final example, an analysis by State staff showed more than a dozen variations between the Federal and State statues and that the State legislature might correct four at most. The next day five local school officials from the same State, argued that there were no such barriers as they saw it, although they were interested in whether the Federal law would help them force the State to honor its funding commitments under State law.

All of this is not to make light of the serious problems of State and local officials as they struggle to implement this desired public policy, but rather to report to you that our best efforts have not necessarily succeeded in pinning down a number of general complaints on a specific State by State basis. Further, where we have been able to work closely with State officials, at least in some instances, there have been possible solutions short of statutory change.

Another major area of widespread interest involves the individual education program. Most comments expressed apprehension that the IEP might be seem as a contract binding either the school system or perhaps the individual teacher to a specific level of achievement for the goals included in such a plan. Although the legislative history has specifically commented that the IEP was not such a contract and our regulations have not varied from that position, we felt that additional comment in the final regulations would be helpful and have made such changes. Basically, the regulations will provide that if a local school system decides as part of the individual planning process, that a child should receive a certain service, for example speech therapy, there is the assumption that such service will be provided. However, the IEP is not a contract that stipulates that such treatment will cure the speech problem.

Let me add, as a final point, that the Office of Education is in agreement with the decision of the Congress in placing the responsibility and accountability for the education of handicapped children with the State Education Agency. Recognizing that in several States the responsibility for service delivery is divided among different agencies, we have prescribed in the regulations several options which may be adopted to fulfill this requirement, including the following:

State law, regulation, or policy could designate the SEA as responsible for establishing standards for all education programs, including monitoing;

Governor's Office could issue an administrative directive establishing SEA responsibility;

Written interagency agreements involing SEA standards and monitoring could be developed.

State law could mandate the SEA as responsible for all educational programs;

In summary, we believe that any substantive amendment of the basic provisions of P.L. 94-142 would be unwise at this time. Our first priority within the Office of Education is to implement these statutory provisions. After one year's experience

with these requirements, it will become far clearer whether statutory change is necessary to reach the goals of a free appropriate public education for all handicapped children.

Mr. Chairman, we look forward to a continuing dialogue with the Congress on the progress of the States and the Office of Education in implementing the new provisions of the Education of the Handicapped Act. We will now be pleased to answer your questions.

Mr. BRADEMAS. Thank you very much, Commissioner Boyer, for what to me is a most encouraging statement.

I said yesterday that when people ask me what I think Congress is likely to be doing in the next 2 or 3 years in the field of education, that it is my own initial judgment that we are not likely to be embarking on any major new authorizing programs but that we should be seeking to meet two objectives: One is to find adequate appropriations to fund the programs that we have already written into law and the second is to work hard with State and local authorities and others affected by the laws we have written to help them implement responsibly, sensitively, and effectively these authorizing statutes.

I think that the Education for All Handicapped Children Act is a prime example of what in my own mind we ought to be doing on both those counts. I want to compliment you, Commissioner Boyer, and your associates on what seems to me to be a very strong and responsible start in getting this important legislation off the ground effectively.

I think that you are particularly to be commended on the obvious care and diligence with which you have sought to consult with so broad a spectrum of affected groups and authorities.

Without inviting you to make any comment, I was very critical of some of your associates elsewhere in the Department of Health, Education, and Welfare for not having gone about that consultative responsibility effectively, and I hope we will see some changes as a consequence of the colloquy between members of this subcommittee and the Assistant Secretary for Human Development. My own judgment is that one of the reasons you are off, it seems to me, to such a strong start is that you have taken the time to do the painful hard work of talking to people.

Having said that, let me ask you to elaborate a little on one of the points that you have made in your statement that I think is particularly important where on page 5 you said that:

> We do not support the position that such—special education—programs can be offered unless the Federal Government pays a substantial percentage of costs. The funding under the Federal statute must be seen as assisting the States with their current responsibilities and not imposing a totally new Federal fiscal or programatic burden.

I ask you to expand on that for a moment because some of the testimony would lead the unsuspecting to believe that the responsibility for educating handicapped children is a mandate that has suddenly been imposed by the Government of the United States while peoples' backs were turned. I wonder if you could elaborate on that point.

Mr. BOYER. Yes. I think we must be very careful as to how we discuss it. I do hear occasionally and with some frequency at times the statement as you frame it, that is, this has been federally imposed and therefore it is not our obligation to carry it forward

unless it is federally funded. I would say it is quite inappropriate to let that declaration stand unchallenged. In my judgment this has been imposed by fairness, it has been imposed by equity, it has been imposed by the courts time and again. Therefore, the origins of this obligation do not flow from the Federal legislature. They flow from a national commitment that has been existing since we entered into free public education in this country.

Now if one were to summarize the Federal role at all, one would summarize it as giving some sense of equity and design and clarity to an obligation that has been inherently rooted in the public education system all along; enriched, I might add, by some Federal funds, recognizing that it is an enormously serious obligation. But I cannot accept the central premise that this happens to have emerged at a late hour because the Federal legislature happened to discover it.

What Federal legislation did, in fact, was add its sense of design and unity, and to some degree uniformity, and added resources to an inherent obligation that I think has existed and been driven by other very fundamental social forces.

Mr. BRADEMAS. Beyond that, is it not the case that most of the States have already undertaken to mandate that which is the mandate of the Federal statute?

Mr. BOYER. As I understand, 49 of the 50 States have already had statutes that deal with this obligation, so it was not discovered with this legislation. As you well know, the court tests have indicated time and again that this is an obligation of the State as it carries on its education of children.

Mr. BRADEMAS. Just a couple more specific questions before yielding to Mr. Jeffords. Could you give us any comment in response to a question which has been raised by some of the State authorities before us who say that the timetable is simply beyond them for implementing the requirements of the act?

Mr. BOYER. I have touched on that earlier, but to expand just a bit, being as careful as one can and sensitive and realistic, there is no question that there are problems, in part because States are very uneven, they are uneven in their readiness for this, they are uneven in their fiscal base. I should remind you that some States entered into this commitment early and the Federal legislation hardly alters what they have been doing. In other instances it will be a tremendous catching up responsibility.

But it reduces to the issue that you have to start some time on a major new obligation of this sort. I repeat again that I doubt that a deferral would change significantly the circumstances that we have been discussing even with the meetings that we have been holding. My considered judgment is that while there may be unevenness, there will be frustration, there will be uncertainties about the total capacity to implement. I do not believe that delay on an issue as profoundly important as this would change the circumstances.

I think rather by moving forward and trying to see that our resources and then subsequent amendments match the outcome is in fact the better strategy.

Mr. BRADEMAS. What about the question also raised of the count of handicapped children? Some of the witnesses in effect were

saying that States ought to be able to count in some circumstances children more than once for purposes of the legislation.

Mr. BOYER. Yes. I would like to have Ed talk about that. It is a programatic issue. It has come up frequently.

Mr. MARTIN. I think it would really make this legislation very difficult to administer at the State and local level as well as federally, Mr. Chairman. In developing the formula the Congress already in a sense approached an average figure as it has in title I, recognizing that there is a variance between what States and what communities within the States pay and that some groups of handicapped children are much more expensive than others to educate.

If you got into counting children, for example, how many times might you count a given child? Suppose you have a cerebral palsy child who received speech therapy, who received some supportive teaching, other supplemental services. You might be in a position of trying to count the child three or four different times, depending on the kind of problem that the multiply handicapped child had. It seems to me that the bookkeeping would be enormous and the need to develop standards for this particular kind of situation where you assess how severe a child is handicapped and so forth.

Now some States have attempted to handle that problem by reimbursing the school districts for the total cost of the program rather than on a per child basis. It does not seem to me to be a Federal role that we can deal with either. Since we are not the direct supplier on any system other than a total federalization of cost, I don't know how we could deal with this.

Going back to the position that the Commissioner has articulated, States are charged with the responsibility for doing that. This bill will provide a sum of money to the States which they can use rather flexibly once they make a commitment to educating all their handicapped children. It will be approximately $150 a child for the next year and it will grow in the President's budget by whatever sum. I think that it will be difficult enough in all honesty to keep track of the numbers of children and to make sure we have an audit trail while giving States and localities the flexibility for spending. That I think is the final answer, Mr. Chairman, that the States can spend this money with some flexibility if they want, put a little more here and little less there. Once they agree to educate all the children, have all the children in the program, they have maximum flexibility for spending the funds on more severely handicapped children and less on less handicapped.

Mr. BRADEMAS. I have some more questions but I will yield to Mr. Jeffords.

Mr. JEFFORDS. Thank you Mr. Chairman.

First I would like to refer back to the dialog you and Mr. Brademas had, about 94-142 being intended as a program to assist the States, rather than as a Federal mandate. I don't disagree too much with that because I know courts have mandated in the appropriate education area. But now with the advent of 504, don't we really have a federally mandated program rather then a program where you can choose whether or not to participate?

Mr. BOYER. Yes. I am sorry, Mr. Jeffords, I misspoke, if I in any way suggested that there is not now a Federal obligation. I was rather suggesting that the obligations flow from more fundamental

circumstances. The Federal action is really giving a kind of ultimate credibility and to some extent national standardization to what I believe is a condition that exists both in the commitments the States have to educate all children and I think it is important. Yes, the new legislation I guess still technically leaves it optional to the State if they would choose to be wholly nonparticipating.

So there is that discretion.

Mr. JEFFORDS. That is my question. In connection with 504 I have heard that if grantees don't do what you feel is appropriate under the purview of 94-142, you will not only deny 94-142 funds, but title I funds, et cetera.

Mr. BOYER. Yes; they drive in from two separate directions, that is true. If you look at 94-142 in isolation it is true, isn't it, in education, a State is free not to submit a plan.

Mr. MARTIN. Yes.

Mr. BOYER. That is, you can be nonparticipating in 94-142. On the other hand if you are discussing 504 where by law no institution can receive Federal funds if it is discriminating, then under that civil rights mandate there are penalties that flow. But I think it is important at least for the record to keep those two circumstances separate.

Mr. JEFFORDS. Is the administration keeping them separate? In other words, is an option still open to the State to say, "we have a different view on what appropriate education is and we are going to have our own standard." Will you let the court decide that or will you say, in our view we are going to go by 94-142?

Mr. BOYER. It gets to be just a little bit of hair splitting I suppose. But it is possible to say, if you prefer, you do not participate in 94-142 but at the same time that is not the same thing as agreeing that you could violate what would be judged to be civil rights mandates. It so happens they might converge on a given program.

The program implementation here is not to be confused by what might be judged by the courts to be discrimination and nonsupport of the civil rights mandates of 504. Indirectly it certainly could mean that a State was judged to be inappropriate through the 504.

Mr. MARTIN. Even if that case were so, Mr. Jeffords, and a State was found to be discriminating under conditions of 504, I think the Federal Government historically has attempted to be helpful in situations of that kind. For example, under title VI of the Civil Rights Act the States have the responsibility not to discriminate against racial minorities but at the same time the Congress did not say that they would absorb all of the costs of desegregating the schools. There is some help available under the Emergency School Aid Act.

But I don't think the Congress has federalized the cost of title VI or title IX. So, I think the parallel here is that we do have a program in 94-142 which is going to make available substantial sums to the school districts in order to help them with this assignment and it is a freedom that the State has to participate in it.

Mr. BOYER. Let me put it this way. If a State were to decide not to participate in the 94-142 the burden of proof would lie with the State in my judgment to prove that they also were not discriminating.

Mr. JEFFORDS. Lie with whom? With the courts or with you as far as 504?

Mr. BOYER. Well the implementation of 504 is under the direct jurisdiction of the Office for Civil Rights.

Mr. JEFFORDS. My point is, the Federal Government is going to be taking a look at it from the point of view of both 504 and 94-142.

Mr. BOYER. Certainly if a State chooses not to educate all handicapped children it would have to demonstrate it was not discriminating against those children. It is about as simple as that. The office of civil rights would have the mandate to see whether that case could be made.

Mr. JEFFORDS. There has been some criticism of the existing law for being too specific in certain areas. We heard the request yesterday for some immediate changes especially with respect to the due process conditions. Witnesses complained that we were interfering with already existing, well-working administrative policies within the States. They claimed that by encroaching with 94-142 we were requiring a separate system, and that we ought to give some flexibility to you in approving a plan, if there were substantial compliance with the due process requirements. Do you agree with that or do you think we ought to wait to see what happens?

Mr. BOYER. I remain open on a series of questions, Mr. Jeffords. That would be one. My own preference always is discretion where that would allow reasonable differences while still achieving the major thrust. I think that is not an unreasonable strategy.

What you are talking about are exceptions clearly. The major circumstance is that there has been no procedure available and, therefore, to codify that, to see that that becomes part of the general strategy, and try then to deal with exceptions subsequently strikes me as strategically the best way to move. Although I would certainly prefer that after some experience we would allow greater discretion because State differences, I think, could be defended and still achieve the overall goal. But we have no specific recommendation of change at this moment that would deal with that problem.

Mr. JEFFORDS. What concerns me is having State plans approved so they can make the statutory changes necessary for compliance. It seems to me that if we are going to take any action in certain areas, we have to take it now. We should not wait to relieve the States of the problems concerning whether or not they can comply as they had planned.

Mr. BOYER. I think that is more of a mechanistic issue rather than a substantive one. That is, to deal with 50 different methods of due process may get us so caught up in the technicalities that the overall effort might be blurred. I can only drift back to my feeling that we are moving on the wiser course at the moment but I would like to leave open the discussions as to whether there could be more flexibility without just seeing the general strategy lost in the detail of the machinery.

Mr. JEFFORDS. But you still don't feel you need any more administrative discretion at this time to help move it along?

Mr. BOYER. I think that would not be the wise step at this time in relation to that question.

Mr. JEFFORDS. Having been a State legislator myself, I know that most of the legislatures meet maybe 3 or 4 months a year. If we don't do something now they wouldn't have time, because they will all have to take action this next legislative session. I don't want to force unnecessary burdens on the States.

Mr. BOYER. When we look at those matters I think the politics of it would argue that if you reopen the entire issue of education for the handicapped children it would really be an extremely long list of discussions not for any wrong reason; but it is a difficult, hard issue to call.

I really feel that we will have missed an important moment if we were to delay and start the question of refinement even on some matters that seem procedurally important. So, I don't want to appear at all insensitive to the particular dilemmas but when you look at the total design and what we are trying to achieve I think to reopen it around one item would probably engage us in extended discussions of a variety of issues. The timing matter seems to me to be an important one.

Mr. JEFFORDS. The individual education plan gives me some concern from two perspectives.

I try to see in my own mind how the courts will view the goal of appropriate education for the child. I am wondering, if you have a plan that is not followed, how is the court supposed to view that? Is the plan merely some evidence of what constitutes appropriate education, or is it rather a binding contract? How should they look at it or how are they looking at it?

Mr. BOYER. I cannot speculate about court determinations of challenges.

Mr. JEFFORDS. Or should they look at it?

Mr. BOYER. Well, they should look at it, if I may be so bold, in terms of what the law says and our regulations repeat. We tried to be very careful to say that in developing a plan the school is indicating the kinds of services it believes would be most helpful to that child given his or her needs. We have been scrupulously careful not to say we are pledging to you certain outcomes which, if not obvious, means we have failed. Now I think that this line is not an unreasonable one and I think the differentiation can be there.

This is not mystical, it reduces itself to certain very particular things. If a child has a speech defect and in the diagnosis and discussions it is clear that the child not only is to go into the classroom but may need special speech therapy, that becomes a part of the plan. The agreement is to help this handicapped child. There are special activities in the school that go beyond what one would call routine and those are noted.

Now to be creditable and I think responsible, what you do is provide speech therapy for that child once or twice or three times a week, whatever, and you have fulfilled the mandates of the plan. You do it with a good teacher. You do it, hoping very much the speech pattern will change. But if at the end of a year or two, and I happen to know something about what I am discussing, having been in the field, there are not changes that everyone wanted and desperately hoped for, the school cannot be held accountable for a particular set of expectations or outcomes.

It does not mean they are negligent. This might be my interpretation operationally of what the plan is, the operations assumed therein and what hazards might be related to maybe overexpectation. I would be surprised and disappointed if the courts didn't listen carefully to those distinctions.

Mr. JEFFORDS. This concerns me because I can see States and local governments becoming so concerned that they will make sure their LEA's make just a minimal obligation, so they don't get in trouble. They will not be giving anywhere near what we anticipated because they will be so afraid to commit themselves to something. They'll fear that if they can't live up to it they will run into serious cost problems. Certainly if the attitudes of the advocates we heard yesterday are carried forward, this is exactly what will happen.

Mr. BOYER. I have two thoughts that come to mind. First: I think the law and its implementation will provide more services to children of the handicapped than existed before the law. So, to suggest that because we have an IEP the child will be less well served, I say less well served compared to what? I would say compared to what our history has been, better served.

That is the first thought but the other one is more I suppose a lament. It would just disappoint me enormously if the implementation of this reduced itself to the cautions that flow from the legal systems and I mean by that on all sides. I mean from the standpoint of parents, I mean from the standpoint of schools. If this becomes simply the opening wedge for court battles and lawyer engagements rather than a serious encounter as to what we can do for the child that is reasonable where we are not trying to over or under promise, we are trying to figure out what are the educational needs, if this legislation cannot move us in that direction but rather moves us in the business of litigation and fine tuning around the fringes of the law, then I must say one finds that a depressing prospect.

Now I don't mean it can be wholly one sided but I would hope very much that the spirit of it could be sustained around the notion of helping children. If in that spirit it is done together and there is a bit of trust on both sides I think we are going to see the benefits that were intended.

Mr. JEFFORDS. Do you think the present legislation is worded or designed well enough to give us much protection against that problem, or do you think we should modify it in any way?

Mr. BOYER. I have no suggestion as to how the wording might somehow capture the spirit—I have not really tested the wording against that notion but I would hope that we too would do our best to keep the implementation of this at that level and that we, too, would demonstrate how open we wished to be. I repeat again, from our administration if there are changes that would make this better then I hope we will be here recommending those changes to you. We don't want to stand rigidly if we can discover together there will be ways to make it work.

Mr. JEFFORDS. Thank you.

Mr. BRADEMAS. Let me ask a pair of related questions. A free and appropriate public education in the act is defined to include related services and that involves a range of health care and rehabilitation

services that go beyond education. I am wondering, in light of that, two things—First: How does the Office of Education expect State education agencies as well as local education agencies to provide these related services, and

Second: What kinds of working relationships have been developed with the Rehabilitation Services Administration at the Federal level tc insure there is coordination in the development of standards for such services?

Mr. MARTIN. The first issue, Mr. Brademas, we tried to write the regulations in such a way as to demonstrate that the school districts as they develop an individual education plan have some responsibility to try to help the parents get those services.

In the past there may have been a laissez-faire attitude on the part of the district, saying this youngster needs services but this district does not supply them and that is your problem. We have not gone as far as to order the school districts to supply those services themselves but we have tried to frame the regulations in such a way that they have the responsibility for directing the parents to the services to help them get them.

We also ran into, in a discussion process, some interesting reactions. That is, certain other agencies were taking the position that they were planning to bail out on this responsibility, now that the school had it they were going to get out of supplying services. So, we had some comments of that kind from public agencies in the rehabilitation and health services area and also from private insurers. So, we have changed the regulations to prohibit that kind of escape and to try to maintain the responsibility for the first provision of services on those agencies or those insurers that have that obligation ordinarily.

The second area as to standards of services is not one that we have gotten anything in writing about right now. We have a number of actions of that kind going on, not just with the Rehabilitation Services Administration but with, for example, the EPSDT, the early periodic screening diagnosis and treatment. One of the things we have done is designate a special person in the Bureau who is responsible for establishing a variety of relationships with other agencies and to develop, where appropriate, agreements, written agreements, between these agencies. We have one such agreement pending right now, for example, with the Director of the Bureau of Vocational Education about how we are going to interrelate better part B and vocational education. We have agreements coming down with EPSDT and I have met already briefly with Commissioner-designate Humphreys and also with the people in the National Rehabilitation Association, itself, and the State directors of rehabilitation services. We have had in the last 2 years a series of dialogs talking about how we can bring these things together.

I think the question of standards is going to grow out of this kind of discussion and I am not sure right now what the feasibility would be of accepting the already established rehabilitation standards for services as a guide. A lot of these are fairly tricky. For example, we are working on the problem of hearing aids in the schools now. We have discovered as part of the survey we did for the Congress that many of the hearing aids that children are wearing are not working. We are trying now to develop some standards that the schools can

use to determine the effectiveness of the hearing aids that children are wearing. This gets us into some areas with other health-related deliverers.

I think I can assure you that I am very hopeful that we can have a much more creative response working together in the rehabilitation and special education areas than we have had historically at the State level. We have had some good relationships at the Federal level in funding model projects, in getting decent postsecondary opportunities for deaf youngsters, and in the creation of the National Center of the Law for the Handicapped.

We have worked on a number of those kinds of things at the State service delivery level. The pattern between the two agencies is less consistent although there are marvelous examples of projects rehabilitating, for example, retarded children working hand-in-hand with the school. It is just systematic agreements and so forth that need to be developed. That is what we will be working for.

Mr. BRADEMAS. That is part of what I am getting at here. I confess to you, Dr. Martin, that I am very skeptical in respect to what you have been doing in this area. I know that you have been meeting with the Commissioner-designate and talked with some of the others. I guess what I am trying to get across, to put it as bluntly as possible, is that from my point of view I would like to see not a sort of convocational get-together but I would like to see a systematic pattern of consultation between your shop and the RSA people to be sure that you are really developing some close linkages here in Washington as well as similar kinds of linkages across the country with the rehabilitation services people so that the intent of the act, that a free appropriate public education should include the kinds of related health and other services of which I speak, really can be carried out in fact. I know this is a difficult challenge but my recollection is that when we last talked about this matter you were in the process of canceling meetings with the RSA people rather than pressing ahead with them. My recollection may be wrong.

In any event, putting that to one side, I am simply entering an urgent plea tht you really work hard, work very hard on this particular dimension, and maybe you can give us, not now but a little later on, some update of what kinds of efforts you have been able to make in this respect. Am I coming through to you?

Mr. MARTIN. I am happy to say to you that I think we are a little bit better off than your skepticism might suggest. I am going to send up to you for the record a page or two description of some of the systematic efforts we have going on now across the Department, the kind of meetings we have, the objective of those meetings, and what you can look forward to. That record is not blank. On the other hand I hear your message loud and strong. I think we can show you some good activities initiated on our part for doing that.

Mr. BRADEMAS. Let me ask you to comment briefly on two other questions before we turn to our next panel. What do you have to say about the criticisms that there are not enough special education personnel to implement the act?

Mr. MARTIN. There are needs in some areas of the country to have more special education people. There are a number of things going on right now to meet those needs.

First: We have redesignated about half of the $45 million that we had appropriated this year for those purposes to inservice training of teachers and others to make them more able to effectively deal with handicapped children.

Second: We are now considering the possibility of adding to their resources. The States have available to them, under part B of the Education of the Handicapped Act, a considerable amount of money that they can spend for inservice training. The 25 percent at the State level is available for that purpcse. The States also are developing, as a requirement under the act, a comprehensive manpower plan so that the ability of the States to look at this area and to use some of the part B dollars is there. I think in all honesty that it is not a barrier that should be seen as meaning that we ought not to be able to go forward with programing.

I think it is relatively simple for a State to put into place some training activities and for local districts to at least provisionally certify teachers and others, and then to develop inservice programs during the year. My own experience is whenever States have been faced with such a responsibility and wanted to do it they have worked up a variety of mechanisms to be able to provide training as they went along. I testified in a Maryland court case on just that point and I suggested that the States have historically found ways to temporarily certify people in order to deliver services when they wanted to. That would be the approach. Through the resources that are being made available both from our training grants and from the act itself I think there are enough dollars to put on responsible programs where they are needed.

Mr. BOYER. May I add this, Mr. Chairman. I think there may be more of a sustained and serious problem than may have been suggested although I agree with what Ed has said. That leads me to say that I believe one of the primary priorities of the Office of Education now and in the next few years is to bring together the moneys and programs we have under the category of continuing teacher education and bring these in a more coordinated way so that we will be able to get maximum use of the funds we have.

We happen to have teacher continuing education moneys in a half dozen pockets and, in fact, we must find a way better to coordinate those dollars because of the urgencies of the education for All Handicapped Children Act and, frankly, because of the need for continuing education in other fields as well because our schools are not hiring new teachers as frequently, budgets are tight. I believe the strategy for good education is now to find ways to invest and reinvest in the teacher who is going to have to take on these special obligations and frankly deal with a changing world.

I would hope that in organizational matters we will be able to come to you at a later date and give you some examples of what we think just in the administration of the Office of Education would drive better toward this objective. That does not deal with the start up problems, I think it is certainly part of the long-term delivery.

Mr. BRADEMAS. My final question, Commissioner Boyer, has to do with money. Do you anticipate any carryover of funds appropriated for the act?

Mr. BOYER. You mean carryover from what fiscal year?

Mr. BRADEMAS. For the next fiscal year?

Mr. BOYER. We have some examples of that, yes.

Mr. MARTIN. Basically the Congress appropriated $315 million, Mr. Brademas. We will use up a sum less than that, perhaps $60 million less than that. The administration has already requested that we be allowed to carry that over and add it to the amount that is appropriated in the 1978 bill that is pending before the Congress now. I think there is $465 million appropriated in that bill or will be when it completes its passage through the Congress and is signed into law, plus the $60 million left over, which makes it about $525 to $535 million. We have just gotten the average per pupil expenditure for last year which we will use to distribute the money in the next few weeks. It will be going out to the States.

Mr. BRADEMAS. You have been discussing money from last year as I understand it.

Mr. MARTIN. That is right.

Mr. BRADEMAS. Do you anticipate a carryover next year?

Mr. MARTIN. I don't think so, no. The reason for that is that the formula doubles from 5 to 10 percent and with the numbers of children we now have on hand just doubling of the formula would use up the money, more than use up the money, that would be available. It is for that reason that I think the Appropriation Committee said they would look again at the count of children next spring and see to what extent they might need to reconsider that appropriation if more children are in fact counted this fall and if it looks like there will be more in the spring. I think we will have, if anything, the other situation where the full 10 percent might require more money than is appropriated.

Mr. BRADEMAS. Thank you very much, gentlemen. Once again I want to commend you, Commissioner Boyer, and your associates for what I think is a very good start. It is a long and complex road but I think you are off and running.

Mr. BOYER. Thank you for inviting us. If we can be helpful in any way please call.

[Information requested follows:]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,
OFFICE OF EDUCATION,
Washington, D.C., November 3, 1977.

Hon. JOHN BRADEMAS,
Chairman, Select Education Subcommittee,
U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: At a recent hearing you requested more specific information as to current activities in developing coordination between the Bureau of Education for the Handicapped (BEH) and the Rehabilitation Services Administration. The implementation of P.L. 94-142 will require the best use of all Federal, State and local resources.

The BEH attaches a high priority to the development of strategies which will direct all available resources to the service of the handicapped population and which will avoid creating duplicate or overlapping delivery systems. In support of these priorities the BEH is currently working closely with the Bureau of Community Health Services, Bureau of Indian Affairs, the Office of Civil Rights, Early and Periodic Screening, Diagnosis and Treatment, the Administration for Children, Youth and Families, and the Rehabilitation Services Administration.

The BEH places particular priority on the work it is doing with the Rehabilitation Services Administration. Because both education and rehabilitation agencies can provide similar programs and services under their respective legislation there has been considerable confusion as to which agency should provide services to children at a given time and how eligibility can be assured for any given child under both programs. In some cases vocational rehabilitation agencies perceived of the education legislation as providing for all services up to age 22 and have withdrawn services to the young population as this example from Massachusetts demonstrates occurred when Massachusetts chapter 766 was completed. Massachusetts Rehabilitation Commission, Client Services Memorandum dated May 23, 1975:

"The attached statement is the Massachusetts Rehabilitation Commission policy in regard to chapter 766. The policy is consistent with Federal Rules and Regulations for consideration of similar benefits which states the State plan shall provide that when, and to the extent that an individual is eligible for such similar benefits, such benefits shall be utilized insofar as they are adequate, and do not interfere with achieving the rehabilitation objective of the individual."

CHAPTER 766 POLICY

"Massachusetts Rehabilitation Commission reconfirms its policy not to provide paid services to clients who are covered by provisions of Chapter 766, that is, students with special needs who are under age 22 and not graduated from high school * * *"

The effects of such a policy, if it were expressed nationally, would be to place the full weight of service on the education agency without relief from existing programs. This particular problem has now been resolved in Massachusetts, however, it serves to demonstrate the confusion which can accompany this new legislation.

The BEH has been engaged during FY 1977 in negotiations with the RSA concerning such problems identified by the State education agencies and State rehabilitation agencies. In recognition of the fact that any proposed initiatives would be dependent on the support of state administrators the BEH/RSA work group has included the participation of the National Association of State Directors of Special Education and the Council of State Administrators of Vocational Rehabilitation. The initial product of these negotiations (see attachment) is a national policy statement by both agencies describing services which can be provided and encouraging state agencies to share in the development of the Individual Education Plan (IEP) and the Individualized Written Rehabilitation Plan (IWRP). This policy statement was approved by the BEH on July 22, 1977 and has now been cleared through the Rehabilitation Services Administration. This policy statement has now been signed by the Commissioners of the Rehabilitation Services Administration and the Office of Education.

The policy statement was distributed to members of the National Association of State Directors of Special Education (NASDSE) at their recent national conference in Costa Mesa, California. That conference adopted interagency planning as a major part of its platform. The interagency work group, which has functioned throughout the year, now has the formal support of the Presidents of the National Association of State Directors of Special Education and the Council of State Administration of Vocational Rehabilitation.

Both Federal agencies have developed and submitted objectives under Secretary Califano's Major Initiatives Tracking System (MITS). The BEH objective sets a goal for the development of specific guidelines to the States on IEP/IWRP development and "First dollar" use of funds.

It is the intention of the BEH, in collaboration with RSA, to use the national policy statement as a spring board for embarking on collaborative activities to resolve problems and issues surfaced by the work group and NASDSE/CSAVR. The work group met on October 26, 1977. At that meeting it was decided to hold a national policy conference on December 19 between NASDSE and CSAVR. This conference will include six directors of vocational rehabilitation, six directors of special education, and representatives from BEH and RSA. The specific agenda will address and make recommendations on: "First dollar" agreements for specific services; integrated IEP/IWRP planning and other significant policy issues. These recommendations will be used as a basis for formulating strategies for interagency actions. The goal of these activities is to assure that handicapped children receive

all of the needed services from both agencies in such a manner as to maximize the effect of tax dollars spent and minimize or eliminate duplication of effort.
Sincerely,

EDWIN W. MARTIN,
Deputy Commissioner,
Bureau of Education for the Handicapped.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,
October 17, 1977.

To: Directors, State Vocational Rehabilitation Agencies, Chief State School Officers.
From: Commissioner of Education, Commissioner of Rehabilitation Services.
Subject: Collaboration between education and vocational rehabilitation agencies.

I. STATEMENT OF THE ISSUE

Cooperative programing by State education and vocational rehabilitation (VR) agencies has been actively encouraged by the Federal government for many years. Many handicapped people entering the public vocational rehabilitation program have typically been under age twenty. Often, those persons were referred by school systems and they maintained their enrollment in the school system while receiving services from vocational rehabilitation.

School systems now have rapidly expanding responsibilities for serving handicapped persons under the Education of the Handicapped Act, the Vocational Education Amendments, Section 504 of the Rehabilitation Act of 1973 and under State legislation. At the same time, the Rehabilitation Act of 1973 requires that vocational rehabilitation agencies make optimal use of "similar benefits" which are available under other programs. This has caused some confusion about what services are appropriately delivered by vocational rehabilitation agencies, by education agencies or by such agencies working cooperatively.

In many States, cooperatively financed school programs for handicapped children were established at a time when special education agencies had limited resources and the vocational rehabilitation program was interested in helping, to the extent possible, to assure that those children approaching an employable age were adequately prepared to bridge the gap between the public school system and the world of work. With the enactment of the new education legislation, Congress has clearly expressed its intention that all handicapped children and youth be provided a free appropriate public education under the supervision of the State education agency. This mandate carries with it a responsibility for other public programs such as vocational rehabilitation to carefully review their current operations to assure nonduplication of services. Thus, this era of expanding programs benefiting the handicapped requires education and vocational rehabilitation agencies to pursue new approaches, and new opportunities, to collaboration.

II. COMMONALITY OF GOALS

The Office of Education and the Rehabilitation Services Administration recognize that they have certain common responsibilities as providers of human services for handicapped persons. Education agencies are concerned with the overall life adjustment of handicapped young persons within their communities, including their ability to become employed. Vocational rehabilitation agencies are concerned with enabling handicapped individuals—particularly the severely disabled—to prepare for and engage in employment. These concerns are clearly compatible and every effort should be made to coordinate available services.

III. PURPOSE

The Commissioners identify the purposes of this letter to be:

(1) To assure that handicapped persons eligible for services under the Education for All Handicapped Children Act of 1975 (P.L. 94-142), the Vocational Education Amendments (P.L. 94-482) and the Rehabilitation Act of 1973 (P.L. 93-112) receive all appropriate services for which they are eligible.

(2) To assure that all agencies administering these laws understand that eligibility under one law should not, in and of itself, result in a denial of *complementary* services under another of the laws.

(3) To assure that the Federal agencies involved are fully committed to aiding State and local agencies engage in coordinated service delivery for handicapped persons.

Further, without restricting the eligibility of any handicapped person, it is the intent of the Commissioners to encourage their constituent State and local agencies to give priority to identifying severely handicapped persons requiring services and

to assure the prompt and effective delivery of services to all those who qualify for them.

IV. Description of the Three Laws

A. Legislative Mandates

Public Law 94-142 mandates that State and local education agencies "provide a free appropriate public education and related services to all handicapped children." Public Law 94-482, Title II of the 1975 Education Amendments makes specific provision for the vocational education of handicapped persons in occupational areas which require less than a baccalaureate degree. The Rehabilitation Act of 1973 (P.L. 93-112) requires that State vocational rehabilitation agencies provide, or otherwise arrange for, services necessary to render eligible persons employable. All three laws require that individual plans or programs be developed for handicapped persons served by the respective agencies.

B. Examples of Activities Which May Be Appropriate Under Each Law

1. *Special education.* The following are examples of special education services that could be provided to assist handicapped students become well adjusted and suitably employed:

(a) Career awareness activities directed toward making the handicapped student aware of himself and/or careers in the world of work.

(b) Career exploration activities in which handicapped students begin to sample and engage in experiences related to specific careers.

(c) Pre-vocational activities to provide handicapped students "hands on" experiences in the development of basic occupational skills.

(d) Basic academic skill development activities to provide handicapped students with adaptability skills needed for socio-economic integration into society.

(e) Auxiliary aids, reader services for the blind, interpreters for the deaf and the like.

(f) Job seeking, job getting and job holding skill development activities that would give a student the opportunity to develop and practice such skills in real and/or simulated situations.

(g) Staff development activities that provide vocational education and special education teachers with special competencies for preparing handicapped students to enter the world of work.

(h) Career and vocational training for handicapped students, including special training needed to augment the vocational education being provided.

(i) Work-Study programs.

2. *Vocational rehabilitation.* Examples of vocational rehabilitation services that could be provided to eligible handicapped persons are:

(a) Evaluation of rehabilitation potential, including diagnostic and related services incidental to determining eligibility for services.

(b) Counseling and guidance, including personal adjustment counseling, to maintain a counseling relationship throughout a handicapped individual's program of service and referrals to secure services from other agencies.

(c) Physical and mental restortation services.

(d) Vocational training and other training services of a pre-vocational, personal and vocational adjustment nature including work experience, books, tools and other materials related to training.

(e) Maintenance, not exceeding the estimated cost of subsistence, necessary to derive full benefits of other vocational rehabilitation services.

(f) Transportation in connection with the rendering of any vocational rehabilitation services.

(g) Services to members of a handicapped individual's family when such services are necessary to the adjustment or rehabilitation of the client.

(h) Telecommunications, sensory and other technological aids and devices.

(i) Recruitment and training services to provide new employment opportunities in the fields of rehabilitation, health, welfare, public safety, law enforcement and other appropriate public service employment.

(j) Placement in suitable employment.

(k) Post-employment and "follow along" services necessary to assist handicapped individuals maintain their employment.

(l) Occupational licenses, tools, equipment, initial stocks (including livestock) and supplies.

(m) Other goods and services which can reasonably be expected to benefit a handicapped individual in terms of employability.

3. *Vocational education.* Vocational education services which could be provided to handicapped persons are:

(a) Vocational education and specific job preparation provided in school for occupations which require less than a baccalaureate degree. Such training can be provided in high schools, area vocational schools or post secondary institutions such as community colleges.

(b) Industrial arts education and consumer and homemaking education, if the State board includes these programs in their State plan.

(c) Cooperative vocational education in which cooperative arrangements between schools and employers are established to provide students with both vocational and academic instruction through part-time employment.

(d) Placement services for students who have successfully completed vocational education programs.

(e) Vocational guidance and counseling services while in school.

(f) Follow-up services for students who have completed or left vocational education programs.

(g) Curriculum development and modification activities required to enable the handicapped student to participate in "regular" vocational education programs with non-handicapped students.

(h) Modification of vocational education equipment to enable handicapped students to develop skills which would lead to gainful employment.

C. OPERATIONAL STRATEGIES

Education agencies are responsible for providing educational and related services appropriate for each handicapped individual for as long as Federal or State law mandates. At the earliest time that a student is identified as potentially eligible for VR services, education and VR agencies should work together on determining what, and how, services are to be provided.

Individualized Written Rehabilitation Programs (IWRP) which are required for VR clients and Individual Education Plans (IEP) which are required for special and vocational education students are similar in purpose and approach. Coordinating the preparation and execution of individual plans offers an excellent focus for coordinating the delivery of individual services. The plans can:

Provide a means for determining the need for, and specifying, joint delivery of services.

Provide a means for insuring a smooth transition for a handicapped individual from a school system to a VR agency so that a continuum of service is provided.

Provide a means for early consultation and joint planning with the individual and his family.

In order that education and vocational rehabilitation agencies may integrate the goals of the IEP and the IWRP, the plans should reflect short term and long range objectives for career development, vocational skill training, personal adjustment and job placement. To effect this integration, education agencies must provide guidance to those preparing IEPs and establish local contact with VR agencies. And VR agencies must similarly assure that appropriate IWRPs—e.g. for persons who should complete their plans for special and vocational education—are developed in conjuction with education agencies.

Education and VR agencies are also encouraged to engage in a wide range of other cooperative endeavors, such as:

(1) Consultation on development of State plans.

(2) Personnel preparation and development.

(3) Consultation and technical assistance on curriculum and program planning in adapting to meet the requirements of new legislation.

(4) Joint operation of special programs designed to merge educational and VR approaches to services in order to ease a handicapped student's entry into the world of work.

(5) Joint work-study programs.

We are, therefore, asking that State Departments of Special Education, of Vocational Education and State Vocational Rehabilitation Agencies begin immediately to implement these various activities and to establish a system, as well as clear agency responsibilities, for joint pursuit of IEPs and IWRPs. We also request that education and vocational rehabilitation agencies examine any problems in coordinating these services and advise their Federal partners of them to enable us to modify policies or otherwise assist you.

V. FEDERAL ROLE: COMMUNICATION

This letter is not intended as a final statement but rather as an initial effort to assist in establishing action plans and resolving impediments for coordinated services. A high level interagency collaborative team from the Office of Education and the Rehabilitation Services Administration and including representation from CSAVR and NADSE will meet from time to time to further this process and to resolve problems identified by State agencies which require our joint attention. You are invited to advise the offices mentioned below of issues, concerns or other matters which you wish the interagency team to consider. If your concern is such that you believe the team would benefit from a personal presentation by you or your staff, please provide us with a brief statement of the problem for our agenda and we will assure you of an opportunity to make your presentation. Please submit comments to: Rehabilitation Services Administration, Office of Special Programs, 330 C Street, S.W., Room 3029, Washington, D.C. 20201, Attn: Thomas M. Fleming (Tel. 202-472-2455); U.S. Office of Education, Bureau of Education for the Handicapped, Sixth and D Sts., S.W., Rm. 4030, Washington, D.C. 20201, Attn: Bob Walling (Tel. 202-245-2727).

Comments should reach those offices no later than thirty days from the date of this letter for consideration at the next meeting of the interagency team which will be scheduled within forty-five days.

ROBERT R. HUMPHREYS.
ERNEST L. BOYER.

Mr. BRADEMAS. We are very pleased to have with us now a panel, Betsy Britten of Ohio; John Huber whom we are very glad to see from the Task Force on Education for the Handicapped from my own congressional district, South Bend, Ind.; Rosalie Iadarola; and Paul Sauerland.

Please go ahead.

STATEMENT OF JOHN HUBER, PROJECT DIRECTOR, TASK FORCE ON EDUCATION FOR THE HANDICAPPED, SOUTH BEND, IND.

Mr. HUBER. If I may introduce also Florence Tait who is also from the Southwestern Ohio Coalition for Handicapped Children. We have asked her to join us in offering testimony.

I would like, Mr. Chairman, if I can to summarize my testimony and let the others introduce themselves in turn. Then if you would like we will be very happy to hear your comments or answer any questions you may have of us.

I am John Huber, the Project Director for the Task Force on Education for the Handicapped, an organization of 100 parents and professionals of St. Joseph County, Ind. We work as a parent information center providing information about education of the handicapped to the parents of northern Indiana, so that we serve some 10,000 handicapped children and their families.

If I may, Mr. Chairman, introduce my written testimony into the record and simply point out that we are all as parents aware of the several organizations that would like to amend Public Law 94-142, the Education for All Handicapped Children Act, and my comments on those proposed amendments boil down to just a few basic principles, the amendments concerning funding.

It is very difficult for a parent to say that we are not interested in getting more money for the education of the handicapped child, and believe me we are not saying that, but on the other hand we are opposed to any proposed amendment that would say that the States cannot provide education for handicapped children until the Federal Government brings in more money to the States.

You have heard from Mr. Boyer the principle that we subscribe to, that it is the States' obligation to educate handicapped children as it is to educate all children, and that the lack of funding is no excuse for backing out of this obligation.

There are other comments that we might make on the child count. A different form of child count that might bring in more money to the States, would we believe be desirable but that to us is a technical question, what methodology is satisfactory to the States.

The amendment to weaken the due process procedures, particularly the proposed amendment to allow certain persons to serve as surrogate parents on behalf of those children who do not have parents, we do not want to see that weakened. We want to see persons doing this job who are completely clean of any possible conflict of interest.

We are opposed to any weakening of the individualized educational program, the "IEP."

We are disappointed in the Federal regulations changing one feature of the IEP. The proposed regulations said that the IEP will list all of the services required of a child whether they are available or not. We thought that was an important point. That is no longer there in the final regulations. We are disappointed.

Nevertheless we are not pressing forward at this point to amend the law because we do think that basically, our final point, we need a good year of implementing what is here in the law, in the regulations, so that we can discover the problems and consider amendments only at a later time.

[Mr. Huber's statement follows:]

STATEMENT OF JOHN HUBER, PROJECT DIRECTOR, TASK FORCE ON EDUCATION FOR THE HANDICAPPED, SOUTH BEND, IND.

Mr. Chairman, members of the Subcommittee on the Handicapped, I am John Huber, Project Director for the Task Force on Education for the Handicapped, an organization of about 100 parents and professionals in St. Joseph County, Indiana who work actively to promote quality education for all handicapped children in our public and private schools. Among our projects is a Parent Information Center, staffed entirely by handicapped persons and parents of handicapped children, both paid and volunteer, people who have both failed and succeeded to provide a full educational opportunity for themselves and their children, who help other parents by providing them with information about educational programs and about their rights, and refer parents to appropriate agencies.

As a vice-president of the Indiana Association for Retarded Citizens with nearly 5,000 members, and a member of my state's Developmental Disabilities Council, representing the whole population of citizens with autism, cerebral palsy, epilepsy and mental retardation, I have heard the anguish of Indiana parents repeatedly, and the response of those charged with providing services. As a resident of the Congressional district represented by the distinguished chairman of your Subcommittee, I have followed the progress of the Education for All Handicapped Children Act through hearings, enactment, proposed rulemaking, more hearings, and now final rulemaking; and I know of and appreciate the continuing efforts of this subcommittee and its chairman to help the states provide a free, appropriate public education to all children with handicaps, perhaps as many as 10 percent of the general school population, my own daughter among them.

The states will face many problems as they seek to implement P.L. 94-142, and this subcommittee has received several recommendations to amend the Act from The National Governors' Conference and four other national organizations. While I do not think that parents of handicapped children are so intransigent as to oppose any amendments which may improve the Act, I know that they will support

amendments only if they truly improve and do not disarm the Act. I would like to comment on these proposed amendments from the point of view of a parent.

AMENDMENT TO INCREASE FEDERAL CONTRIBUTIONS TO THE STATES

The National Governors' Conference et al. propose to increase federal contributions to the states by authorizing moving immediately to the 40 percent level authorized for 1982. While parents are hardly opposed to more money for more services, they will be adamantly opposed to any attempt to hold the states harmless from providing special education services to handicapped children until that 40 percent level has been reached. The proposers of the amendment claim that certain features of P.L. 94-142 are too expensive and go beyond the mandates of Section 504 of the Rehabilitation Act. There are two weaknesses in the argument. The first is that the cost of special recordkeeping, written individualized educational programs, new accounting systems and accelerated personnel development and training all appear to be exaggerated. The other is that these requirements are all to some extent obligations of the states if they wish to follow the mandates of Section 504 and avoid costly litigation coming from parents. But the most important difficulty is that proponents of the amendment seek to avoid the basic responsibility to educate all handicapped children, which is the responsibility of the states.

AMENDMENT TO ASSURE FEDERAL FINANCIAL SUPPORT

The proponents of this amendment seek to make federal support a matter of contractual obligation, and ignore the fact that Congressional appropriations have already been generous, and may be expected to continue so in the future.

AMENDMENT TO CHANGE CHILD COUNT

Proponents of this amendment claim that a count of children served, no matter how many services they receive, is less fair than a cumulative count based on services provided. They further maintain that an average based on 2 counts of October 1 and February 1 is less fair than a count over the first full school week in February. It is difficult to see that a nonduplicated count is unfair, since the funding formula is based on the average cost of educating the handicapped child whether that child is mildly handicapped and receives a single, relatively inexpensive service, or a multiple handicapped child who requires several expensive services. The time of the count may at first appear not to matter, but to hold the count in February may provide schools with an incentive to delay providing special services until well into the school year; and there is a real disincentive for schools to promote the gradual entry of some children from special education into regular education. No amendment is desirable until the actual consequences of the current procedures for counting children have been studied.

AMENDMENT TO WEAKEN STATE AUTHORITY

A dangerous amendment is the one proposed to weaken the requirement that the State education agency be responsible for assuring that the requirements of the Act be carried out. The supposed fear is that centralized authority may lead to less responsive service than a decentralized authority. The proposed amendment speaks of setting education standards, rather than enforcing them. In Indiana, we have schools operated by the Board of Health (the State School for the Blind and the State School for the Deaf among them), but we have not experienced any special problems in placing the enforcement mechanism in another state agency, the Department of Public Instruction. In fact, our experience has been that a single enforcement agency is necessary for our children. Part of it is simply a matter of visibility to parents. In Indiana, ask a parent whose child resides in a state hospital who is responsible for their child's education. They will tell you that it is the responsibility of the public schools. Most of our institutionalized children go to public school, not inside their state hospital building, invisible to the public, but outside in the community public schools, where they belong. We have been able to achieve this because our parents have always known who is in charge. Without a strong state authority, our schools would never serve our children adequately. Operating a parent information and referral center as I do, I hear daily calls for assistance. In almost every instance, the trouble has been at the local level, and the solution has come from the state level. The state has not, I think, come down too heavily on the local schools; their impulse is, quite properly, to negotiate, to conciliate, to coordinate and to communicate before threatening more drastic action. But without the ability to enforce regulations, the state would lose its credibility as a negotiator and conciliator, and the parents and children would be the worse off. There can be no weakening of the state's authority.

AMENDMENT TO WEAKEN DUE PROCESS PROCEDURES

PL 94-142 prohibits employees of agencies serving handicapped children from acting as surrogate parents. Proponents of amendment suggest that the only reason for the requirement is to prevent agencies serving handicapped children from placing their own interests ahead of the children themselves. They argue, however, that an employee of an agency serving the child could, if he had no direct involvement with that child, serve as a surrogate parent. What they fail to perceive is the possible conflict of interest such a surrogate parent might find himself in. Suppose, for example, that a welfare caseworker serves as a surrogate parent for a child who is not a part of his normal caseload. Suppose further that the caseworker is dissatisfied with the diagnostic assessment done for that child, or with the amount of speech therapy prescribed in the child's educational program. Is he truly as free as he should be to request another assessment, or revise the individualized educational program, even to the point of a due process hearing? It seems clear that such a person could be put on the spot. It is simpler to avoid the potential conflict by not asking such persons to serve as surrogate parents. The important point to remember is what the proper role of the surrogate parent is. It is not to provide another avenue for professional input into the educational plan for the child, for there are other avenues to accomplish that. The surrogate parent is simply a person who speaks on behalf of the child as a parent would, a person who must be satisfied that the child's needs have been adequately described, that the services have met those needs, and that they are delivered as promised. People are needed who can make the child's interests their own. We do not have to look to other prefessionals for this job, and worry about possible conflicts of interest. We can look instead to the general public, especially to other parents of handicapped children as we do in Indiana. There is no need for an amendment to qualify a pool of candidates, when there are plenty of people available, with the right kind of training, to do the job.

AMENDMENT OT WEAKEN INDIVIDUALIZED EDUCATION PROGRAMS

Proponents to amendments to P.L. 94-142 fear that the individualized educational program will cause litigation, not education. They want it stated explicitly that the IEP is a planning tool only, and not a contract for services or a guarantee of educational achievements. The Federal Regulations make it very clear that an IEP does not guarantee that a child will achieve goals aimed at in a written document, so no one need seriously fear that he will be sued for not letting Johnny read at grade level by April of next year. On the other hand, an IEP states what services a child shall receive, and so the child must receive them or be able to complain. For a school to describe what Johnny needs, and then not let Johnny have it, is to cheat him. That is precisely what is happening already, according to some of the parents who have come to the Parent Information Center. For instance, one parent at the end of the school year sat with teacher, principal and director of special education in one of our local schools, and drew up a plan whereby her hearing-impaired, retarded son would be in a class for retarded children and receive special assistance from a consultant to improve his communication skills. The plan was drafted and signed by all parties. At the beginning of the school year, the parent received a letter stating that her son would not be getting the services of a consultant after all. The parent and the boy have both been cheated. The case is now in a due process hearing; but without the principle that the school must do what it says it will do, these people have no recourse. Call it a legally binding contract for services or not, the IEP must be a commitment between the school and the child, and the child must have recourse when the commitment has been violated.

In conclusion, Mr. Chairman, the proposed amendments to P.L. 94-142 have two purposes. One is to give the appearance that educating handicapped children is too expensive and too complicated for the states to handle, and the other is to weaken the requirements so much that the states are not obligated to serve handicapped children. To concede to any of these amendments is to weaken the central notion of the Education for All Handicapped Children Act, that the obligation to provide a free, appropriate public education for all handicapped children is an obligation of the states. Without this fundamental principle, even massive funding for special education will result in inequities.

Thank you, Mr. Chairman, for permitting me to present the concerns of many parents, who are anxious to see P.L. 94-142 implemented this year.

Mr. HUBER. If I may introduce Betsy Britten who has further testimony to offer.

STATEMENT OF BETSY BRITTEN, DIRECTOR, SOUTHWESTERN OHIO COALITION PARENT INFORMATION CENTER, CINCINNATI, OHIO, ACCOMPANIED BY FLORENCE TAIT, VICE PRESIDENT, SOUTHWESTERN OHIO COALITION FOR HANDICAPPED CHILDREN, CINCINNATI, OHIO

Ms. BRITTEN. Mr. Chairman, members of the Subcommittee on Select Education, thank you for the opportunity to present testimony regarding the Education for all Handicapped Children Act of 1975—Public Law 94-142.

As a former regular education teacher, and as mother of three children, including an 11-year-old daughter with spina bifida in public school, I speak for myself.

As the director of the Parent Information Center in Cincinnati, Ohio, I speak for over 1,500 parents of handicapped children who are members of the Southwestern Ohio Coalition for Handicapped Children—SOC.

The Parent Information Center is a service of SOC, which is composed of 13 different parent groups of handicapped children who have joined for the purpose of seeing mandatory education a reality in Ohio.

The parents in Ohio from whom I speak, depend upon The Education for All Handicapped Children Act to achieve a "free appropriate public education" for their handicapped children.

Until Public Law 94-142, it was a privilege, not a right, for a child to be educated in the State of Ohio. Temporary withdrawal of Federal funds for special education [1] finally motivated the Ohio legislature to pass a State law mandating education (Amended Substitute H.B. 455), effective August 1976.

Previously, Ohio had permitted public education only for those children who could "substantially benefit", and could label and exclude handicapped children as "uneducable". The Education for All Handicapped Children Act reversed this traditional educational philosophy in Ohio by stating that first priority be given to these very same "uneducable" children.

Without the strong Federal guidelines of Public Law 94-142 as now presented, children will continue to be excluded or inadequately served in many areas in Ohio. Even now, without the continuing determination of parents of handicapped children to hold fast to the same educational dream for their children, which has long been taken for granted for their sisters and brothers, this remarkable piece of liberating legislation will not be fully implemented. Just last year there were reported 229 unserved children in the four-country area of greater Cincinnati.[2]

The implementation of the Ohio law remains dependent on pressure from Federal guidelines. The following is a statement to the Parent Information Center from the State Superintendent of Public Instruction, July 14, 1977:

Thank you for your continuing interest in the education of handicapped youngsters. I would be pleased to discuss this matter with you at your convenience. It may

[1] Under Title VI B, Public Law 93-380.

[2] 1976-77 Child Data Report Summary, Special Education Regional Resource Center, 3147 Clifton Avenue, Cincinnati, Ohio 45220.

be more beneficial, however, to wait until the rules and regulations for Public Law 94-142 are published.

Many amendments to Public Law 94-142 have been proposed. We believe that the law, as yet untested, should not be amended at all. It is our observation that much of the opposition toward public education for handicapped children derives from the fears of both professionals and lay persons, whose actual contracts with handicapped individuals have been minimal.

Unfortunately, "most board members and superintendents typically come to their offices with little training or exposure to disabled kids." [1]

We have also seen that in the more progressive educational environments the reality of integrating special education children and regular education children serves to allay these anxieties, and that all children benefit educationally and attitudinally.

It has been demonstrated that successful procedures devised by special education teachers are equally as effective with all children. Children do learn to accept and value differences, instead of fearing them. The creation of tolerance and mutual understanding between handicapped and nonhandicapped children could lead to a generation of tolerant and understanding handicapped and nonhandicapped adults.

For parents, the heart of the law is the assurance our children will receive an appropriate education through the mechanism of the Individualized Education Program (IEP).

The Education for All Handicapped Children Act recognizes that children cannot advocate for themselves, and has now granted us an opportunity to influence our children's educational future through participation in developing, monitoring and revising their IEP.

Parents recognize this opportunity to be active participants in educational planning as both a new privilege and a new responsibility. We will need to become more informed than was traditinally required when schools assumed full responsibility for education.

The final regulations make it clear that the promise of the IEP is not for the child to achieve specific instructional objectives, but for the educational agency to deliver the services as agreed upon as needed. An IEP without that accountability would be a travesty in which we cannot afford to participate.

The IEP is not sonething to be decided in court. It is an opportunity for parents and professionals to set down together for the first time to decide what is really best for the child. This is the great new chance for shared responsibility and shared commitment.

We have been asked, quite simply, to readdress our priorities. At the roots of this powerful legislation is a moral issue: Do we value one child over another? Controversies in implementing the law will be dealt with in the practical, daily confusion and difficulties of funding, administration, procedures, et cetera.

But since when, in our country, do we let the challenges of time, costs, and paperwork, however real, overcome basic human and civil rights?

[1] McGrew, Jean B. Ed.D., Superintendent, East Grand Rapids Public Schools, East Grand Rapids, Mich., The Exceptional Parent, October 1976.

As long as we can maintain our goal clearly in mind—that all children are entitled to a "free appropriate public education"—these challenges can be met and conquered.

Encounters with longstanding traditions are not met without difficulties, and it can be predicted that the necessary changes will require time.

All the more reason to implement this law, not amended in fear, but reinforced in commitment. The proof of actual experience will dictate needed alteration.

Thank you again for the opportunity to appear today. The Parent Information Center appreciates your concern and leadership in the educational welfare of our handicapped children, and will be glad to make its resources available to the subcommittee. We encourage you to continue your affirmation of the right of a free appropriate public education for all children by your support of this law as written.

Mr. BRADEMAS. Thank you very much.

Mrs. Rosalie Iadarola.

STATEMENT OF ROSALIE IADAROLA, PARENT, WASHINGTON, D.C.

Mrs. IADAROLA. When asked to prepare this statement, I reflected how best to impress upon you, the necessity to forge ahead with the implementation of Public Law 94-142, responding to no pressures for amendments. I decided the best way was to share my perspective with you gained through a lifelong, personal involvement with mental retardation.

Forty-eight years ago, in 1929, my brother Ernest was born—retarded. When he was 7 years old, a class called "ungraded" was available to him in New York City. About 15 other children ranging from severely to mildly retarded were in the class with him.

If you were of school age, retarded, toilet trained, and mobile, you were accepted. The teacher could do no more than baby sit. She longed to be able to help each child gain basic skills commensurate with their potentials, but she had no tools, no guidance, no status.

She did have the cooperation and gratitude of every mother, for the spark of hope and decrease in pressure this class afforded them. I realize, today, this was an enlightened first step to recognize the educational rights of the mentally retarded on the part of New York.

At 16, my brother "graduated." He was idle except for 3 years when he happily swept floors, cleaned out sinks, ran errands in the local barber shop; for tips.

At 29 he had a breakdown and was institutionalized. Six months of medication helped him over this crisis. My parents, realizing they were getting older, chose with great conflict of conscience, to retain him in the institution.

For 18 years he had no significant training. At the age of 48, Ernest was truly institutionalized in mind and body, almost succumbing in spirit also.

Yet, at the age of 48, a miracle took place. Since January 1977, my brother has been living in a private home under the "Family Care Plan" with three other retarded men. Each day they travel to

a sheltered workshop and busily engage in specific tasks with their peers.

The quality of his life and that of his friends, has vastly improved. The widow caring for them gains too—she continues her nurturing role, while earning money necessary to her existence.

My brother is benefiting from years of hard work and persistence on the part of parents and friends to change attitudes, both lay and professional. Did not the accumulative effects of public education directly influence the ability of citizens to function effectively for change and progress in our society?

It took 48 years for some positive changes to take place in my brother's life. I cannot help thinking; had progress proceeded at a swifter pace, my brother almost surely would be holding a job and living in the community today, perhaps in the same city with me.

In 1957 our fourth child, a son, was born retarded. When we sought a public school education for him in the District of Columbia, there was no appropriate placement. Not much had changed in the 28 years since my brother's educational needs had gone unmet. The fact that my son could not partake of a public education, mattered to no one but his parents.

At great sacrifice we payed tuition for Robert's education in one of the few available private area schools. After 5 years of this, the injustice of the situation engulfed me.

I banded together with a group of parents in similar circumstances. We became the nucleus for some significant changes on the part of the District of Columbia Board of Education.

As our work progressed, so did our vision and this nucleus joined and worked with the local association for retarded citizens.

Our work seemed to have a snowballing effect. We formed a coalition group called Concerned Citizens for Exceptional Children. In August 1972, we thought we had it made.

Judge Joseph Waddy decreed in the *Mills* v. *Board of Education* suit, that every child had a right to a publicly funded, appropriate education.

Sad to state that in 5 years since this decree, many children in the District are still inappropriately placed, still going without an education, still falling through cracks. The Board of Education and the Department of Human Resources continue to argue about who is responsible for what services to the handicapped.

I attach an article and an editorial from the Washington Post dated August 4 and 12, 1977, decrying this situation.

As parents in the District schemed and worked, so did countless other parents in every State of our Nation, press for the educational rights of their handicapped children.

We know this is the only path offering sustained hope for growth. Many a teacher, social worker, psychologist, lawyer, saddened and frustrated at the sight of wasted human lives—like my brother's teacher was 40 years ago—joined with parents to force change.

The phenomena of simultaneity was at work in our land, in pursuit of justice. Nothing could stop it. Nothing will stop it. Public Law 94-142 is a product of this awesome energy.

One of my last efforts in this big push was working on a committee called, Least Restrictive Alternatives. HEW had invited parents to help lay the groundwork for Public Law 94-142.

It's a good law. It's been in gestation for over 75 years, ever since compulsory education laws became truly effective for most people in our country. The States have had a long time to mobilize their resources.

It is a formidable task, educating every handicapped child in America, but the hearts and minds of Americans are ripe for the undertaking.

To those seeking amendments, replace your search with a total willingness never before demonstrated, to give the fullest measure of your State's talents and generosity to the task at hand. Build upon the strong foundations the past affords you.

Implement the rules as they are now written—they have been formulated to result in specific, necessary changes. If any regulation of Public Law 94-142 proves a hindrance in getting the job done, then is the time to seek amendments, but not before.

The combined forces that have brought us to this point, remain to support and assist, to prod and demand.

What an unending flow of benefits, what yields, will accrue to our Nation through honest implementation of this humane law.

I have an IEP that I have been receiving for 3 years from my son's school if anyone is interested in it.

Mr. BRADEMAS. Thank you very much, Mrs. Iadarola.

[Attachments referred to follow:]

AFFILIATIONS

1968-1970—Founder of the D.C. Committee for Children with Mental Retardation and Special Learning Disabilities.

1970-1974—Co-chairman of Governmental Affairs Committee of District of Columbia Association for Retarded Citizens.

1971-1973—Co-founder and member of executive board of Concerned Citizens for Exceptional Children.

1971—Member of Task Force on Special education for D.C. Public Schools.

1972-1974—Member of D.C. Development Disabilities Council.

1973—Member of Advisory Parents panel with Closer Look.

Washington Post, August 12, 1977

98-811 O - 78 - 9

A Familiar Story

FIVE YEARS AGO this month U.S. District Court Judge Joseph C. Waddy ruled that handicapped and emotionally disturbed children have a constitutional right to a public education and ordered the District government to offer such children appropriate educational opportunities—within 30 days. That was in 1972. Last week Judge Waddy, for the umpteenth time, learned that city officials still aren't able to comply fully with his order. What was supposed to be the city's final plan for providing education to all handicapped children is little more than "a plan to plan," according to the special consultant for the case whom Judge Waddy appointed two years ago. Clearly exasperated, the judge accepted the plan only as a "statement of policy" and gave the city's attorneys two more months to draw up a detailed plan. D.C. school officials have said they do have a detailed plan but didn't submit it to Judge Waddy because of a misunderstanding.

The response of District officials to Judge Waddy's order during the past five years—a mixture of inaction and incompetence—is a familiar tale, similar to the city government's response to two other District Court orders. One concerned an order to eliminate a backlog of hundreds of pending welfare applications in the Department of Human Resources; the other had to do with the government's failure to correct inhumane conditions at the old D.C. Jail (a case that also has been dragging on for five years). In those court cases, as in the case before Judge Waddy, city officials—despite contempt citations—demonstrated an astounding ability to find excuses for not doing what the courts required. This unwillingness to take the special steps to meet what is, after all, a court order, reveals to us not only an arrogant disregard for individuals particularly dependent upon the government, but a basic disrespect for the law as well. We trust that officials of the Department of Human Resources, the other city agency responsible for educating handicapped children, and the city's attorneys will at least meet Judge Waddy's latest deadline.

Lawyers charge city is lax in providing special education

By Martha M. Hamilton
Washington Post Staff Writer

Five years after a federal judge ruled that the city must provide an adequate, publicly supported education to all physically, mentally and emotionally handicapped school-aged children, the District of Columbia still fails in that task, lawyers for the Mental Health Law Project will argue today in U.S. District Court.

The lawyers' arguments, which are disputed on several points by District officials, are in response to the city's periodic filing of its plan for implementing the 1972 court order.

In their review of the plan, the attorneys (who represented seven students on whose behalf the court order was won) charged that the city fails to provide adequate special education in a variety of D.C. institutions and fails to evaluate and place students as quickly as required by the decree.

But the director of one of the institutions named by the lawyers — Cedar Knoll, part of the city's Children's Center complex, where the attorneys charge that "special education services...are virtually non-existent" — disputed the accuracy of some of the lawyers contentions. And the school system's director of special education said some of the causes for delay are out of the city's hands.

The allegations and responses to them do point up one continuing problem in implementing the decree, however — difficulties in coordination between the school system and the city's Department of Human Resources (DHR).

"A full year after the report by a court-appointed special master who reviewed weaknesses in the city program...defendants are still unable to pinpoint who should do what, when and how," the lawyers wrote.

In their plan the city failed to mention one major institution, St. Elizabeth's Hospital, where school-aged children with special education problems live, the lawyers said. As are the other institutions named, St. Elizabeth's is administered by DHR.

Eugene Stammeyer, associate director of psychology at St. Elizabeth's, said in an affidavit that the bond of special education for D.C. Public Schools, Doris Woodson, "refused to recognize" that the schools have a legal responsibility to provide special educational services to youths covered by the decree who are at St. Elizabeth's.

"That's not exactly accurate," said Woodson. She said that the schools have had difficulty getting information from the hospital about which St. Elizabeth's patients are wards of DHR. DHR, in an agreement with the school system, has taken for itself the responsibility of providing those students with an appropriate education.

"They don't know which is which," said Woodson, who also said that this was the first year St. Elizabeth's had ever requested teachers from the D.C. public schools. The request coincided with a cutback in the teaching staff at the hospital. "They're asking us to take up the slack. It's not that easy," she said.

The lawyers also charge that at Cedar Knoll school there are "at least 240 (students) whose special education needs have not even been evaluated. Their classes are overcrowded and understaffed; equipment and supplies are lacking or not fully operational. The teachers receive little or no in-service training and in many cases they do not possess the same special education certification requirements for public or private school teachers."

Cedar Knoll Director B. Ritchy Atkinson defended the school's programs as adequate, although he said he would like to see improvements, including additional teachers. All students are tested and enrolled in the institution's school and are "all getting special education," he said.

The court makes the determination that students go to Cedar Knoll rather than to some other educational setting, said Atkinson. The court also periodically evaluates what Cedar Knoll is doing for inmates on an individual basis.

Although the teachers at the school are not certified by the D.C. public schools, said principal Lawrence Manning, they are certified by DHR. All academic teachers have special education training, he said.

Affidavits filed by teachers at Cedar Knoll said that the student-teacher ratio in the school-based program is 20 to 1, 240 students to 12 regular teachers. Atkinson said there are 21 academic teachers. The current population of Cedar Knoll is about 200, he said, although it usually is higher in the fall.

During an unannounced visit to the school, a reporter found 14 children and one teacher in each of three classrooms visited. What was going on in the classes ranged from a beginner-ess gripe session in one language arts class to another where students at fifth grade level and above worked quietly from workbooks on a variety of math problems, ranging from simple multiplication and division to square roots and plane geometry.

A file pulled during the same visit reflected that, at least in the case of one student, four types of tests, including two tests for social attitudes and emotional problems and two for academic achievement, had been administered on two occasions. The file also contained records from the student's previous public school. However, the school serves two types of students — committed and detained. Detained students are usually not completely evaluated, since they may not stay for long, said Atkinson.

"I think our deficiencies are used as an excuse for getting kids out rather than as a reason for improving our deficiencies," said Atkinson. Most of the students at Cedar Knoll are "better off here than in the community even with our deficiencies," he said.

The lawyers also charged that 36 multiply handicapped children under the age of 18 at the Glenn Dale Hospital for the chronically ill receive no educational services and called a plan to improve services at the Forest Haven institution for the mentally retarded "a model of vagueness, contingent upon future funding and uncertain scheduling."

Woodson said she has detailed a staff member full-time to Forest Haven for the past two months and has reallocated $4,500 to pay for educational assessments there.

On the question of delays in evaluation and placement of students in regular schools, "our track record has improved," said Woodson. She cited statistics that indicated a variety of reasons beyond those for which the school system could be held accountable in placing children in special education.

Among those were cases were situations where students had moved, where they had been placed elsewhere by their parents, where they had been recommended for placement in private institutions but had not yet been accepted, where parents did not cooperate in the placement, where students were incarcerated, where families had disappeared leaving no forwarding address and one where a parent had requested a delay to seek another evaluation.

Mr. BRADEMAS. Our final witness on this panel is Paul Sauerland.

STATEMENT OF PAUL SAUERLAND, PRESIDENT, VOICE FOR THE HANDICAPPED, INC., HICKSVILLE, N.Y.

Mr. SAUERLAND. Chairman Brademas and members of the committee, it is my pleasure to testify before you today on Public Law 94-142, the Education for All Handicapped Children Act. At the outset, I want to take a moment to compliment you, Congressman Brademas, for your outstanding work in the Congress on behalf of handicapped persons throughout the Nation. It is good to have your strength, your commitment, your philosophy, your untiring activity on our behalf at this level.

I am Paul Sauerland, myself totally blind, and I am the parent of two handicapped children, one legally blind, now a young adult, and one profoundly deaf whose 12th birthday happens to be today. He is certainly in a position to benefit from Public Law 94-142, and I think of him as I testify today.

I am active in local parent groups, including Voice for the Handicapped and SEPTA—Special Education Parent Teachers Association.

Professionally, I am a social worker, functioning presently as coordinator of legislation and special projects in the Office for the Handicapped of Catholic Charities, Diocese of Rockville Center, Long Island, N.Y.

Public Law 94-142 is a challenge. It is a challenge to parents throughout the Nation, many of whom have not had the opportunity to participate in the planning for and monitoring of their children's special education. It is a challenge to teachers to work closely with parents, children, and school administrators to develop and to carry out meaningful individual education programs. It is a challenge to school administrators to think and plan more flexibly, to recognize individual needs, to embrace the concept of the least restrictive environment so that needed program options are available, to seek out and develop resources, to become sensitive to the rights of parents and handicapped children to due process.

It is a challenge to boards of education to make special education available in their districts according to the spirit and the letter of Public Law 94-142. It is a challenge to State education administrators in terms of planning, funding, monitoring, enforcing in the spirit of a fully effective Public Law 94-142.

It is a challenge to Federal administrators within HEW in reviewing and accepting State plans and reports to look beyond terminology to make certain that a free appropriate public education is, in fact, being provided to all handicapped children and to act forcefully when it is not.

Finally, it is a challenge to the Congress to fund the law at least within the authorized amounts and to monitor the effects of the law as they unfold.

Thus far, the Congress has met its challenge. These hearings today and the earlier Senate hearings are important facets of this activity.

I am pleased with the possibility that the Congress will permit unused funds from the first fiscal year, when the count of handi-

capped children is likely to be lower than anticipated, to be carried over to the following fiscal year, when the child count will probably be higher.

It is, of course, essential that the funding be maintained at the maximum authorization and that mechanisms such as the one just described be found and employed to make full use of available moneys.

I urge the Congress to be mindful of the extensive background for Public Law 94-142 and, consequently, to resist amendments which would dilute its effectiveness.

In general, the amendments proposed jointly by several State level organizations fall into that classification.

There is something to be said for improving the procedure for counting handicapped children so that it does not exclude children who are regularly receiving special education and related services but not on a particular day of a week or month. However, the remainder of the child-count system should be experienced before changes are introduced.

The individual education program, a keystone of the law, though probably not a legal contract in the fullest sense of the word, must not be relegated to the status of a mere paper plan. The amendment proposed by the State level organizations would, in the judgment of the people with whom I have consulted do just that and would, therefore, defeat the very purpose of 94-142.

One cannot deny that, in these days of generally increasing costs and increasing activity within the field of special education, funding presents major problems.

Yet, as pointed out in testimony before Subcommittee on the Handicapped of Human Resources Committee of the Senate the low levels of Federal funding during the early fiscal years under Public Law 94-142 should not be used as an excuse for noncompliance by States, since, as a matter of law, States are supposed to be doing the things that the Federal Government now requires of them.

The availability of due process procedures is most significant to the parents of handicapped children and represents a tool that will undoubtedly be more and more frequently used in the next few years. No level in the currently prescribed process should be removed.

In fact, I see a developing need for a further insurance that the impartial hearing officers at the local level are, in fact, impartial.

In New York State, we find that retired school superintendents from nearby school districts are being extensively used as hearing officers. Many of us have very serious questions about the ability of such persons to be thoroughly impartial.

In conclusion, I would like to refer again to the idea of challenge which I introduced earlier. In order that there may be, for everyone involved, the maximum of assistance and encouragement to accept and meet the challenges inherent in Public Law 94-142, I would highly recommend to this subcommittee that, in presenting its report to its parent committee, it do so in a way which reemphasizes the original intent of the Congress in passing the law, namely, that a free appropriate public education be provided to every handicapped child in the United States and that the only

way this can be accomplished is through a full implementation and enforcement of the law as passed.

Changes may well come later, but it seems to me that the task right now is to fully activate the law as it is, unclouded by any question as to the intent of the Congress or of the administration that the philosophy and purpose of Public Law 94-142 be carried out. Thank you for the opportunity.

Mr. BRADEMAS. Thank you, Mr. Sauerland.

Mrs. Tait, if you could summarize your testimony because we have other witnesses we will be glad to put your entire statement in the record.

STATEMENT OF FLORENCE TAIT, VICE PRESIDENT, SOUTHWESTERN OHIO COALITION FOR HANDICAPPED CHILDREN, CINCINNATI, OHIO

Mrs. TAIT. I am Florence Tait from Cincinnati, Ohio. I am vice president and legislative chairman of the Southwestern Ohio Coalition for Handicapped Children.

I am particularly concerned about Public Law 94-142 as it affects the State of Ohio. There are changes coming; there are very helpful changes being made.

My own local school district has ramps and elevators as a result of the implementation of 504. My daughter will be receiving physical therapy as a result of Public Law 94-142. This is not necessarily the condition throughout the State.

We need a firm date of implementation. The State is very dependent on Federal funding. If we keep the pressure on for the Federal funding it will mean the children within the districts will get the services.

We are very concerned about the one agency having the overall responsibility for the education of all children. Ohio has a dual system. Because of the pressure of 94-142 we at least have three school districts operating under a single program in which the trainable, mentally retarded children are now served in the public schools.

This is a breakthrough in Ohio. It would not have happened without the pressure of 94-142 and we would like to see that that particular pressure for the single agency be continued.

We are also concerned about the individualized educational program. We do not want to see that weakened. We are afraid that it will be only a paper plan. A paper plan does nothing for the children involved.

These are my basic concerns along with Mrs. Britten's in connection with the State of Ohio.

I appreciate the opportunity to talk to you and will be happy to answer any questions you might have.

[Statement of Florence Tait follows:]

No kid needs another handicap. Let 'em learn!

PRESENTED BY FLORENCE TAIT

TESTIMONY TO THE HOUSE SUBCOMMITTEE ON SELECT EDUCATION

SEPTEMBER 27, 1977

I am Florence Tait, from Cincinnati, Ohio, and am the mother of four children, two of them physically handicapped. I have been involved in the Southwestern Ohio Coalition for Handicapped Children since shortly after it started, and am currently Vice-President and Legislative Chairman. Our coalition has been active in helping parents, has an office and staff for information and referral, has worked with other parents across the state of Ohio to see that legislation was passed to make an education for all children mandatory, and then worked to get the funds to make that promise a reality.

We're not there yet, and that is why we need P.L. 94-142 to stay as strong as it is. The bill really hasn't gone into effect yet; let's give it a chance to work.

Ohio might not yet have a law for mandatory education if it were not for P.L. 94-142 and its predecessor P.L. 93-380. Our state law in Ohio has language which, after the local school districts identify the children and submit a plan for their education, makes the local implementation of special education and services contingent on the receipt of state funds. Our mandatory education law has no date for compliance and Ohio is still using standards from 1973 for program and placement.

We are concerned that if the effective date of P.L. 94-142 is postponed beyond September 1, 1978, it will mean that all our

SOUTHWESTERN OHIO COALITION
FOR HANDICAPPED CHILDREN
P.O. Box 19115
Cincinnati, Ohio 45219

CHARTER MEMBERS
Association for Children with Learning Disabilities, Cincinnati Chapter
The Cincinnati Association of Parents and Teachers of Hard of Hearing and Deaf Children, Inc.
Condon School Parent and Teachers' Association
Guilford School Parent and Teachers' Association
Hamilton County School for Retarded Children Parent and Teachers' Association
Muscular Dystrophy Association of America
Myelomeningocele Parent Association of Greater Cincinnati
The Ohio Valley Clinic and Associated Centers
Parent Association for Emotionally Handicapped Children
Society for Autistic Children of Greater Cincinnati, Inc.
Springer School Parents' Association
United Cerebral Palsy of Cincinnati Parent Group
Advisor —
Elmer P. Beckman, Director
Special Education
Regional Resource Center
University Advisor —
Donald H. Zemenek, E.D.D.,
Head of the Department of
Special Education
University of Cincinnati

children will not be served until 1982 or whenever that effective date might be. Children don't stay little, waiting until a school is ready to accept them. They need programs and they need them now.

Another concern we have in Ohio is that P.L. 94-142 retains the language it now has, giving a single agency the overall responsiblity for the education of all children. Ohio has a "dual system". Because children of a certain I.Q. level, 50 to 55 depending on the circumstances, were excluded from the public schools, a separate system was set up to provide for those children. The Trainable Mentally Retarded (TMR) system has evolved into an extensive program over the years providing education and other services for selected low functioning children. However, children placed in the TMR program are isolated from the regular school. Obviously, two systems lead to problems. Children who are multiply handicapped were rejected by both programs. The public schools could raise the I.Q. cutoff point, sending the child to the TMR school, and the parent had no recourse. Additionally, the 169 Boards, which were set up to oversee the Trainable Mentally Retarded Programs, are appointed, not elected, and are not accountable to the public they serve.

Because of the mandate of P.L. 94-142 and the temporary loss of Title VI B federal funds for special education which led to the passage of our state law, these two departments are beginning to work together. There are now three school districts which have a funded program to put TMR classrooms into the regular school. This is a direct result of P.L. 94-142. The bureaucracies are well established, and they have not been too happy about this forced companionship. If P.L. 94-142 is amended to eliminate this provision for a single state agency to have the final responsibility for overseeing the program, there is the chance that these two agencies will again go their separate ways and we'll be right back where we started from.

We need firm guidelines about the Individualized Education Program (IEP), what it does and what it contains. The people who should be friends of handicapped

children, the professionals we trust to educate our children in the schools, want to dilute these provisions. A national spokesman for the teachers in an article in the March 1977, American Teacher, feels this puts pressure on the teacher for accountability, and wants the IEP to be only an annual report. The definition of the IEP must be a contract for the services described; what else can it be? A Plan looks forward, not backward; and a Plan worth making must be intended to be carried out. Plans existing only on paper aren't even promises, they're a waste of time and money if they are not to be implemented and the prescribed services provided.

We hear that the schools need more time or more money; that there is not enough federal money coming into the states for special education to cover this added burden, that the effective date be postponed until the federal funding is increased. When will there ever be enough money as long as handicapped children are regarded as a liability?

We are concerned with a moral obligation. Special children need an education as much or more as normal children. They need to be included in the mainstream of our society. They need the chance to prove that, handicap and all, they're worthwhile human beings. They need the opportunity to develop as people with some control over their own lives. They cannot wait any longer.

Yes, educating handicapped children costs money. It may cost as much as $5,000 to $8,000 a year for 12 years per child. Yet, warehousing that child in an institution costs about $18,000 a year for a lifetime. Money for special education pays for itself.

Mr. BRADEMAS. Thank you very much.

Let me thank all of you. What I find significant, perhaps most significant, about your statements is that there seems to be a common theme running through them; namely, don't be too quick to amend a law that has not yet been really put into place.

I would reiterate that we worked on this legislation for several years and gave ample opportunity to all and sundry to come forward and let us have their views and suggestions.

My own views, too, as Commissioner Boyer has suggested, is that we ought not to tear the machine apart, at least before we put it on the highway and see how it runs. I for one certainly stand ready, as chairman of the subcommittee, speaking for myself, to listen to suggestions for amending the legislation down the road if it seems sensible to do so. It would be ludicrous to take an adamant position against amendments which experience proves would be wise.

I confess that I am a little apprehensive about rushing to amend this legislation before we have ever given it a chance to be tried out.

I am struck by the testimony also of a number of you to the effect that had it not been for the passage of this Federal act there would not have been much activity in some of the States from which you come. I simply want to thank you.

I have a question for Mr. Huber, if you will indulge me because he is my constituent, also I want to ask him a question or two about what happened in Indiana.

To what extent, Mr. Huber, have you found difficulties in dealing with our State government in moving to implement this legislation or have you found the pattern of cooperation relatively encouraging.

Mr. HUBER. My impression is a general one. I am very encouraged by the State. This is a commitment. Some changes have to be made in State procedures. We are revising our State rules and regulations in order to catch up with 94-142 but there is a commitment on the part of our commissioner of education as well as our director of special education to do just that.

Our State plan, therefore, is being delayed, it is not ready for submission to the Bureau at this time but the principle is that we will comply and I am very pleased with the State.

If we have problems they are problems that occur at the local level.

Mr. BRADEMAS. I am very encouraged to hear that.

Mr. PRESSLER. Would the gentleman yield on that point?

Mr. BRADEMAS. Yes, of course.

Mr. PRESSLER. I think that raises a point.

In some of the smaller States, such as South Dakota, there are no adequate training facilities for certain types of specialized handicapped sometimes. There is always jockeying to select an out-of-State institution. Sometimes the State and parent disagree on the proper institution. This is particularly true when a handicapped person, who has been outside the State, reaches 21, comes back in the State and is institutionalized in the State mental institution or wherever the State pays to send him.

Would this not be an argument for federalizing some of the programs? You said that in Indiana the problem was at the local level. I keep getting cases from parents—South Dakota is a small State. In Indiana you have greater facilities—but there is so much concern about where you send a young person. I don't know if you have come across that problem or not.

Mr. HUBER. I have come across it with individual parents. It is a matter of perspective. I always thought of Indiana as a small State.

Mr. BRADEMAS. Sir? [Laughter.]

Mr. HUBER. With disproportionate greatness coming out. I think this is the kind of thing that has to be worked out in cooperation with parents and the State officials. I think that the cooperation level is high. We have the protections at our end of the due process procedure so that when there is a genuine disagreement basically these things can be worked out.

As to your question about personnel training, I think that a great deal of the Federal money that goes to the States can be used for personnel training and there is going to have to be quite a bit more of this, that is for sure.

Mr. PRESSLER. Do any of the rest of you on the panel have a comment? People increasingly feel strongly that the State is trying to save some money or there is not enough understanding or they want the students in a different institution in another State than the State wishes to, and I don't know if this is a common problem or not.

Mrs. IADAROLA. You mean, if there is no appropriate placement for the child within that State, the State is asked to pay tuition in another State school, a different State?

Mr. PRESSLER. That is right. There is a great deal of disagreement over what is selected and sometimes at age 21 a child who has been out of the State will be asked to come back to the state in one of the existing State institutions that the parents don't feel has personnel available for the handicapped.

We have gotten several cases from parents who feel that the handicapped person with a specialized handicap in a small State, if the State does not take the same initiative as New York——

Mrs. IADAROLA. That is when the child is past 21?

Mr. PRESSLER. In some cases. In some cases it is when the child is whatever age.

Mrs. IADAROLA. I don't know about after 21 but if it is proved through the due process procedure that there is no program within that State for that child but there is one across the border I don't see what difference it makes.

Mr. PRESSLER. Most of our handicapped children's parents are prepared to go to court under a due process procedure. Most of them are hesitant to go through a court proceeding.

Mr. HUBER. I think one of the great advantages of 94-142 procedure is that it does stay out of the court until the last resort. The procedures are internal.

Mr. PRESSLER. Let us say they have been sent to a place in Texas, or something and they become 21. Let us say that a State decides that it would prefer to have the person in the State mental institution, for example, and the parents feel that that does not provide a specialized type of attention.

Then what recourse do the parents have as a practical matter?

Mr. HUBER. It is an excellent point. You are talking primarily about mentally retarded persons, severely mentally retarded, I suppose.

The Office of Human Development is the agency that should be helping the States find that solution in that area. I do think the principle is that the parents must have a choice. It is quite interesting that the parental rights are very strong in 94-142.

My own wish as a parent of a mentally retarded child is that the parental rights in human services to our adult offspring are just as strong.

Mr. PRESSLER. I hope you are right.

Mr. BRADEMAS. The Chair recognizes Mr. Jeffords of the great State of Vermont.

Mr. JEFFORDS. I have just a couple of questions. People from the States have suggested that there are equally good, or better due process laws in the States, compared to the procedures set forth by Public Law 94-142 in rather explicit detail.

I wonder if you know of better due process procedures in any States? If so, should we give more discretion for the States to work in this area?

Mr. HUBER. I have my own experiences in Indiana. We have for the creation of IEP what we call the Case Conference Committee.

Now the 94-142 regulations require only that there be representatives of three parties, the school administration, the teacher of the child, and the child's parents, where appropriate the child also.

These three people are enough to constitute a committee to design an individualized education program. In Indiana we do not have only those three people. We seek to have all of the people involved in the assessment and care of the child, the psychologist, the speech therapist, regular teacher, physical education teacher, everybody involved in the care of the child. Sometimes a physician is added.

This is something that Indiana finds desirable and Indiana has added to its own regulations. I don't know that 94-142 regulations have to be changed. I do think we have something better in Indiana in this one instance but I think that Indiana simply adds more requirements to the IEP requirements than 94-142 does.

Mr. JEFFORDS. Does anyone else wish to comment on that?

Mrs. TAIT. Mr. Jeffords, I can speak only for Ohio, but it has been our experience within our own State law when the mandatory education law went through they were trying to put through a much milder, more modified form of due process.

We worked very hard to get strong language, quoted from 94-142, written into our Ohio revised code and there is an effort on the part of people in the State to try to weaken that and dilute that so that from our standpoint the present regulations are touch and are needed and our own situation in our State is that they would be worse rather than better through any improvements they might suggest.

Mr. SAUERLAND. In New York State, which is my experience, we may have some problems, basically the due process procedures that have been set up by the State Education Department and by law parallel 94-142.

However, at the level of the local impartial hearing the 94-142 law and regulations indicate that that decision is final unless it is appealed.

Under the New York State procedure that decision goes to the local board of education which then makes a decision. It can either uphold it or deny it or modify it. I don't know quite how that is going to be interpreted by those who review the New York State plan or later on if conflicts actually occur.

I would still opt for not changing 94-142 at this time in that regard.

Mr. JEFFORDS. One final question.

Some concern has been expressed, relative to the IEP's, that if they are considered more as a contract and obligation to perform than just as a plan, it will limit local governments in what they will put into a plan.

Do you feel that is a realistic matter of concern?

Mr. HUBER. I personally feel that it is a matter of concern. I think that the manner of correcting that possibility is exactly what is already in 94-142, the due process procedures. What we really need is training of parents to know how honestly and fairly to judge an IEP, how to recognize what is a decent individualized educational plan for their child, what meets their child's needs. If they find that an IEP is going to be so vaguely worded that it promises nothing for the child, they will then know how to make that judgment, know how to appeal that judgment through the due process procedures that we have.

Mr. JEFFORDS. I will point out that there has been great debate in the Congress over whether we should have a preponderance of the evidence standard, or whether the normal administrative rule of substantial evidence should apply.

In deference to the parents we chose the preponderance of the evidence standard. This will afford a better opportunity for the parents to contest an IEP in the courts, if necessary. The counter-argument, of course, is that everyone will be so worried about putting anything in the plan, without the backing of substantial evidence, that we will end up with very perfunctory nonspecific plans.

I am concerned about this. I am not really asking for any comments, unless you have them. It is an area that I hope you will keep us advised on.

Mr. HUBER. The arguments about kinds of evidence I leave to legal philosophers. I think we already have an avenue for the parents to contest an inadequate individualized educational plan. That is there already and needs no change.

Mr. SAUERLAND. I don't think the introduction of wording which would deliberately express a narrowing concept is going to help anybody to get a better IEP.

Mr. JEFFORDS. That is all I have, Mr. Chairman.

Mr. BRADEMAS. Thank you all very much indeed. We are grateful to you.

Mr. HUBER. Thank you Mr. Chairman.

Mr. BRADEMAS. Our last two witnesses are Donald McKinley, chief deputy superintendent, California State Department of Education, and the Honorable Arthur L. Berman, State Senator, 11th

District Illinois, chairman, Senate Elementary and Secondary Education Committee, and chairman, Illinois School Problems Commission.

Because, I regret I have to say, I must be at a meeting with the Speaker in 4 minutes, I am going to have to leave but will yield the Chair to Mr. Jeffords in whom I have so much confidence. Even though he is a Republican, I am willing to surrender the gavel to him.

But I have read through your testimony.

I want to thank both of you for it. I did talk with Wilson Riles when he was here a few days ago about what you are doing in California. I may say that I have been encouraged at the commitment to this legislation that you have made in your State even as I noticed Senator Berman indicates support for the legislation, also. I do think that it is interesting, and I will just leave this with you to wrestle with Mr. Jeffords on, that in one case you recommend amendments while in the other case you warn that we don't really need them. I think that that fact alone is a commentary on the varying attitudes in a big country toward this legislation.

I agree with what was said at the hearings yesterday that we don't want to get into an adversary situation here with the white hats and black hats because it seems to me we all have a common stake to work together to make the legislation effective.

On that note I will turn the Chair over to Mr. Jeffords.

Mr. McKINLEY. Before you leave I might indicate on the amendments that you indicated there was some inconsistency, we could not favor amendments that would change the intent. The amendments are on implementation which we think will help carry that intent.

Mr. BRADEMAS. I appreciate that. You clearly have heard the voice of those who represent handicapped children who are obviously apprehensive that amendments will weaken the force of the statute rather than strengthen it. I think one has to take into account that apprehension in the real world.

STATEMENT OF HON. ARTHUR L. BERMAN, STATE SENATOR, 11th DISTRICT, ILLINOIS; CHAIRMAN, SENATE ELEMENTARY AND SECONDARY EDUCATION COMMITTEE AND CHAIRMAN, ILLINOIS SCHOOL PROBLEMS COMMISSION

Mr. BERMAN. Mr. Chairman, I am Arthur Berman.

Before you run, and I know you are late, I would point out in my testimony that we do recommend amendments. The reason we recommend amendments is because we think, and my experience in Illinois is, that we have to separate 504 requirements from 94-142 in order to have States comply with 94-142. We want States to accept that plan.

I think that some of the fiscal implications are going to be a barrier to adoption by States. That is the reason why we are suggesting amendments, not to change the purpose of 94-142, but to carry them out.

Mr. BRADEMAS. I appreciate that.

Mr. JEFFORDS. Thank you, Mr. Chairman.

You may proceed.

STATEMENT OF DONALD McKINLEY, CHIEF DEPUTY SUPERINTENDENT, CALIFORNIA STATE DEPARTMENT OF EDUCATION, ACCOMPANIED BY DAVID CAMPBELL, DEPUTY SUPERINTENDENT FOR PROGRAMS

Mr. McKINLEY. Thank you very much.

I am Donald McKinley. I am Chief Deputy Superintendent of Public Instruction in the State of California.

With me is David Campbell who is our Deputy Superintendent for programs and in whose shop the administration of this particular act falls. He will not be presenting testimony, but is available to assist in answering any questions.

On behalf of superintendent Riles and all of the public schools in the State of California and nearly 345,000 handicapped individuals in California we really appreciate this opportunity and thank you for the opportunity to present testimony not only to support but to propose some strengthening measures, we think, for Public Law 94-142.

I think it is in the record that California has had a long record of serving the handicapped. Up until 1974 we had 28 various categorical funded programs and in 1974 we came to the conclusion that this multi-categorical approach really was not serving the best interests of all the youngsters, did not provide appropriate service nor equal opportunity.

So in 1974 we passed what is called a master plan for special education. It was enacted through assembly bill 4040. This master plan for special education provides for special education programs to assure that each individual was served according to his individual needs and at no cost to the parent.

You can see the master plan parallels the rights and requirements of 94-142 in these particular regards. It provides education, as appropriate, with nonhandicapped youngsters. It assures individual education programs. It sets up assessment protection. It has due process safeguards. It involves a review of pupil progress. it has a personnel or staff development component which we think is the key and essential in this kind of activity.

It involves parents in the community. It has a component of program evaluation. So, as a result of what we have done in California and the commitment we have made in California we applaud the intent and the requirement basically of 94-142. We see it as a very significant piece of legislation and what we are trying to do in California and what 94-142 is trying to do is parallel and consistent.

Let me give you a little more information about 4040 as it was enacted so that you can see how it does tie in and why we make certain recommendations which we think will strengthen; 4040 was enacted on a phase-in basis. Not all school districts in California are involved in 4040. Approximately 10 percent of the AB's in California are involved in the master plan concept.

During this past session of the legislature it was reviewed and needed modifications were made in the legislation through AB1250 which we expect the government to sign this week. At the present time we have put in approximately $280 million in support of special education programs in the State of California and the new legislation in AB65 adds an additional $245 million of new State

money by the year 1981-82 which will bring our total State commitment to $525 million.

By comparison the Federal support is $25 million in California.

We look to the Federal Government as a partner in making this important right a reality and therefore I suspect that will raise some question with regard to the size of that partnership that the Federal Government is assuming at the present time.

In the same vein in which Commissioner Boyer testified this morning and others before us, because of our experience with similar legislation in AB4040 we encourage Congress to allow a reasonable period of time before any substantive amendments, which would change the intent and philosophy of the act, are introduced.

The requirements of individual education programs, requirements of due process, have been criticized, we know, but the strength of the act would be lessened we think without such specificity.

Initial implementation requires a period of trial before the necessary data can really be collected on which we can make the decisions to amend the act.

Second, a major recommendation we would make, for the Federal Government to attain its appropriate partnership role, a full appropriation of funds.

California as well as other States has committed itself to the education of all handicapped children and has done so in the hope that Congress would indeed assist the States and localities in this effort.

We do not see that Congress should in any way assume the total burden but the legislation does call for assistance and that is what we are asking for.

We do have other recommendations which I indicated to the chairman before he left which we feel will enhance the smooth implementation of the act but which will not alter the intent or strength of the State grant authorizations.

Public Law 94-142 requires every participating State to make a free appropriate education available to all handicapped children but the Federal Government assumes only a minor partnership.

Currently, as you know, the bill authorizes payment equal to 5 percent of the national average in 1978, going up at the rate of 5 percent the first year and 10 percent thereafter to 40 percent in 1982. The law requires delivery of these services in 1978 and the logic of a phase-in, a fiscal phase-in, at this time seems questionable as far as we see it.

In view of the start up cost, cost of staff development requirements, administrative costs, the formula should show a higher percentage in the early years. Short of 40 percent in 1978, we think it is essential that this level of support be achieved by fiscal 1979 and 1980.

Another concern we have which has been mentioned, and Commissioner Boyer and his staff commented on it this morning, is the child count issue.

We have two issues. No. 1, currently the law calls for an October 1 and February 1 dual count. In other words, a count on October 1 and February 1. As I understand, there will be an average drawn

at that time. There is also no provision for a duplicated count. The question was asked concerning the duplicated count this morning. I think many States have pointed out the disadvantages of the October count. Handicapped students, as we see it, too, need related services.

I understand some of the difficulties of trying to identify some of those related services but the count ignores the related services aspect and the added cost that comes as a result of the related services.

A duplicated count would provide the necessary incentive to include the related services to be sure that they are a part of the individualized program.

It would provide classroom instruction, speech pathology services, audiology services, physical therapy, and other services that would be needed for many youngsters. These services do cost considerably more than the class placement alone by category.

We recommend a change to allow for a duplicated count to be conducted during the first school week in February only. Doing that would provide some simplicity in the census as well as an incentive for full quality services and would not require two efforts during a particular year.

We think that there would be some loss by not having two counts but then it would be compensated for by having a duplicated count once a year.

With regard to equitable distribution of local education entitlements, beginning in 1979, the States participating in 94-142 must distribute 75 percent of receipts under the act to local education agencies in relation to the number of handicapped children receiving special education and related services.

Now this formula permits communities to receive the Federal funds without regard to other available financial support and without recognition of potentially substantial variations in the needs of students to be served in the various communities.

As such it will direct Federal funds not only without regard to the character of special education needs but also in a pattern that may undermine overall State school financed equalization efforts.

This problem, to be sure, could be overcome under the current provisions of Public Law 94-142 if State educational agencies were to exploit a provision which permits them to reallocate entitlements from localities that provide full opportunities to localities that do not.

This provision, however, permits reallocation only on an ad hoc basis, requires States to acknowledge that they are not providing all children full support.

So we support recommendations that Congress amend Public Law 94-142 to retain 75 percent allocation for local education agencies but authorizing States to allocate Federal funds to local educational agencies in accordance with a uniformily applicable formula of their own, according to criteria such as the prevalence of special education needs and ability of the locality to support them from otherwise available resources.

In regard to the issue of personnel development, Public Law 94-142 requires the establishment of a comprehensive system of personnel development.

The staff for personnel development, as we see it, is essentially for teacher and support personnel to carry out the intent of this law, to provide for the individual educational programs, to provide for the least restrictive environment aspects of this, so that there is full understanding and we see that personnel or staff development, which I use interchangeably, are essential.

We see this as an essential part of our master plan in California. We have funds available for doing this but the size of this act requires, I think, that personnel development be a major aspect.

Therefore, our experience with implementation of our master plan has demonstrated that this ongoing staff development is a key to success.

We urge that the funding be available so that this can occur.

I think this will answer some of the questions you raised this morning with regard to how the bill will be implemented that inservice will be the key.

With regard to architectural barriers, 94-142 calls for the education of handicapped individuals with their nonhandicapped peers to the maximum extent that is appropriate. Regulations governing section 504 of the Rehabilitation Act of 1973 strengthened this mandate for education in the least restrictive environment and then adds a specific requirement accessibility to buildings and programs.

Section 607 provides for grants to State and local education agencies for removal of these architectural barriers, yet funds have not been authorized by Congress.

If they are going to do this and carry it out, and we think it should be carried out, it is imperative that funds be proposed and appropriated for this purpose.

Now, definitions of handicapped provide some problems. Certainly much has been said regarding the misfit of State and Federal categorical labels. Realizing the necessity for data collections and the difficulty in finding terminology acceptable to all States, our State department of education asks only that Congress review its own legislation to ensure consistency at the Federal level.

Three important pieces of legislation or their governing regulations propose different definitions for the handicapped.

Section 504 of the Rehabilitation Act of 1973 includes drug addicts and alcoholics. Public Law 41-942 does not. The Vocational Education Act omits the learning disabled. Public Law 94-142 includes such a definition.

To avoid further confusion it is recommended that the Federal Government study the issue of categorizing the handicapped, review existing Federal-State legislation, and recommend and utilize consistent terminology.

Allocation consistencies among laws raise some questions as far as we are concerned. To promote the coordination of resources for needs of secondary students it is our hope that Public Law 94-142, the Vocational Act, Public Law 93-3112 and funding models be reexamined so that all allocations for handicapped be based on numbers of persons who are handicapped as in Public Law 94-142.

Public Law 94-0482 uses a disadvantaged criterion for allocation to districts. Public Law 93-3112 uses State median income for State allocations. This change will promote State interagency operation

98-811 O - 78 - 10

which has been difficult in the past and which is called for I think in 94-142.

In conclusion, Mr. Chairman, I would like to reaffirm California's support of the congressional intent expressed in the Education for All Handicapped Children Act and to reiterate our position that amendments be considered cautiously and be adopted only after careful consideration of available facts.

If you have any questions Mr. Campbell and I will be glad to respond.

[Statement of Mr. McKinley follows:]

Mr. Chairman, Members of the Select Education Subcommittee: I am Donald McKinley, Chief Deputy Superintendent of Public Instruction for the State of California. With me today is Davis Campbell, Deputy Superintendent for Programs. On behalf of the public schools in California and the 344,811 handicapped individuals served by those schools, I thank you for this opportunity to present testimony to support and help strengthen the intent of The Education for All Handicapped Children Act of 1975 (P.L. 94-142).

California's commitment to the education of handicapped individuals has been longstanding and had, by 1974, resulted in the establishment of over 28 categorical programs and related educational services. Recognizing, however, that this multicategorical approach still did not assure the provision of appropriate service delivery to each child, nor equal opportunity to enter public educational programs, the California State Board of Education adopted the California Master Plan for Special Education in 1974. This policy document and its enabling legislation (AB 4040, 1974) provide for the restructuring of special education programs to insure that each individual with exceptional needs has the right and opportunity to participate in educational programs, designed to meet his/her unique needs and at no cost to the parent.

The California Master Plan provides a service delivery system which parallels the rights and requirements of Public Law 94-142: education, as appropriate, with nonhandicapped peers; individualized educational programs; protections in pupil assessment; due process and other procedural safeguards; review of pupil progress; personnel development; parent and community participation; program monitoring and evaluation. Thus, California is in full agreement with the basic intent and requirements of the Federal Act (and has been since January, 1974). We see Public Law 94-142 as the most significant piece of legislation for guaranteeing the rights of handicapped children.

The original enabling state legislation for the Master Plan (AB 4040) was enacted on a phase-in basis. This past year it has been necessary for the legislators to review and amend the legislation to provide the support for statewide implementation by 1981. Approximately $245 million of new state funds have been committed to this end, bringing the total projected state commitment to special education in 1981-82 to over $525 million. In the current year California is providing approximately $280 million in state funding for special education programs. By comparison, federal support for special education programs in California this year is projected to be about $25 million. We look to the Federal Government as a partner, providing fiscal, technical and conceptual support for reaching our mutual goal of full appropriate service.

With our experience in piloting similar legislation, we offer the following recommendations:

First, we strongly encourage the members of Congress to allow a reasonable period of time for implementation before substantially amending The Act. Though many of the requirements such as the Individualized Education Program, Due Process Procedures, or State Supervision, have been criticized for their specificity, the strength of The Act would be seriously lessened without them. Only through the trials, errors and successes of implementation will Congress have the data necessary to make sound judgments on such proposed changes while protecting the purpose of the Act.

Second, we strongly encourage the full appropriation of funds authorized in The Act. As with other states, California has legally committed itself to the education of all handicapped children, with the faith that Congress would indeed "assist States and localities" in this endeavor (Section 601(c)).

The remaining recommendations are offered as points for your consideration and focus as initial implementation begins nationwide. If, after consideration of all testimony from states and interested parties, Congress intends to amend The Act,

we recommend the following changes. These proposed changes are administrative in nature and would enhance smooth implementation without altering the philosophical intent.

STATE GRANT AUTHORIZATIONS

P.L. 94-142 requires every participating state to make available a free appropriate public education to all handicapped children but makes the Federal Government only a minority partner in bearing the associated costs. Section 611(B) sets forth the increments in funds that will be available to assist states in implementing The Act. The Act currently authorizes federal payments for each eligible special education student at a rate equal to 5 percent of the national average per-pupil expenditure in fiscal year 1978; 10 percent in 1979; 20 percent in 1980; 30 percent in 1981; and 40 percent in 1982. Since the law requires the delivery of adequate educational programs by 1978, the rationale for phase-in of federal support is questionable. In view of the start-up costs that will result from new programs and services, inservice requirements and new administrative costs, the formula should show higher percentages in the early years.

It would be desirable if Congress would amend P.L. 94-142 to eliminate the phase-in of federal contributions, authorizing 40 percent of the national average per-pupil expenditure multiplied by the child count beginning fiscal year 1978. Short of this, it is absolutely essential that Congress and the President appropriate the full authorization in at least fiscal years 1979 and 1980.

CHILD COUNT

Two issues are raised with regard to the child count provisions: (1) the October 1-February 1 dates for conducting the count, and (2) the requirement of an unduplicated count.

Many states and local educational agencies have expressed the pitfalls of the October 1 count, recommending that dates closer to the middle or end of the school year would provide more accurate data.

P.L. 94-142 stipulates that programming for handicapped individuals include needed related services. Another section disregards the added cost of the related services by prohibiting states from counting by service (that is, by requiring an unduplicated child count). In order to provide incentives for the inclusion of all related services in a student's Individualized Education Program (IEP), the student count must provide states the opportunity to receive appropriations based upon service costs. Classroom instruction, speech pathology services, audiology services, physical therapy, and other services may cost considerably more than special class placement alone. The appropriation formula should account for these additional costs.

We believe that the present census method should be amended to provide for a duplicated count of all pupils receiving special education during the first full school week during the month of February. This census method retains the administrative simplicity of the present procedure while providing an incentive for quality services.

EQUITABLE DISTRIBUTION OF LOCAL EDUCATIONAL AGENCY ENTITLEMENTS

Beginning with fiscal year 1979, states participating in the P.L. 94-142 program must distribute 75 percent of their receipts under The Act to local educational agencies in relation to the number of handicapped children receiving special education and related services. This formula permits communities to receive federal funds without regard to other available financial support and without recognition of potentially substantial variations in the needs of students to be served in different communities.

As such, it will direct federal funds not only without particular regard to the character of special education needs, but also in a pattern that may undermine overall state school finance equalization efforts.

This problem, to be sure, could be overcome under the current provisions of P.L. 94-142 if state educational agencies were to exploit a provision which permits them to reallocate entitlements from localities that are providing "full opportunity" to localities that are not. This provision, however, permits reallocation only on an ad hoc basis, requires states to acknowledge that they are not providing all children "full opportunity," and leaves state educational agencies open to the same charges of "favoritism" which led the Congress to substitute the current formula for the old Title VI-B grant application mechanism. We support others' recommendations that the Congress amend P.L. 94-142 to retain the 75 percent allocation for local educational agencies, but authorizing states to allocate federal funds to local educational

agencies in accordance with a uniformly applicable formula of their own, according to criteria such as the prevalence of special education needs and the ability of localities to support them from otherwise available resources.

PERSONNEL DEVELOPMENT

Section 613(a)(3) requires the establishment of a comprehensive system of personnel development for teachers and support personnel. Funds have not been proposed to fully finance such an effort. If personnel development is to become a reality and the requirements of The Act fulfilled, funds must be appropriated by the Congress for this purpose immediately. Our experience with implementation of the California Master Plan for Special Education has demonstrated that ongoing staff development is a key to success.

ARCHITECTURAL BARRIERS

P.L. 94-142 calls for the education of handicapped individuals with their nonhandicapped peers to the maximum extent appropriate. Regulations governing Section 504 of the Rehabilitation Act of 1973 strengthen this mandate for education in the "Least Restrictive Environment," and add specific requirements of accessibility to buildings and programs.

Section 607 of P.L. 94-482 provides for grants to state and local educational agencies for the removal of architectural barriers, yet funds have not been authorized by Congress. It is imperative that funds be proposed and appropriated for this purpose.

DEFINITIONS OF HANDICAPPED

Certainly, much has been said regarding the misfit of state and federal categorical "labels." Realizing the necessity for data collection and the difficulty in finding terminology acceptable to all states, the California State Department of Education asks only that Congress review its own legislation to insure consistency at the federal level. Three important pieces of legislation (or their governing regulations) propose different definitions for the handicapped. Section 504 of the Rehabilitation Act of 1973 (P.L. 93-112) includes drug addicts and alcoholics—P.L. 94-142, does not. The Vocational Education Act, P.L. 94-482, omits the learning disabled; P.L. 94-142 includes such a definition.

To avoid further confusion at the state and local levels, it is recommended that the Federal Government carefully study the issue of categorizing the handicapped; review existing federal and state legislation; and recommend and utilize consistent terminology.

ALLOCATION CONSISTENCIES AMONG LAWS

To promote the coordination of resources for needs of secondary students, it is recommended that P.L. 94-482 (Vocational Education Act) and P.L. 93-112 (Rehabilitation Act) funding models be reexamined so that all allocations for handicapped be based upon numbers of persons who are handicapped, as in P.L. 94-142. P.L. 94-482, The Vocational Education Act, uses a disadvantaged criterion for allocations to districts, and P.L. 93-112, The Rehabilitation Act, uses a state median income for state allocations. This change will promote state interagency cooperation that has been difficult in the past.

In conclusion, I would like to reaffirm California's support of the Congressional intent expressed in The Education for All Handicapped Children Act and to reiterate our position that amendments be considered cautiously and adopted only after careful consideration of available facts. We hope the testimony given today will expedite and strengthen the implementation process, assuring equal educational opportunity for all handicapped individuals.

Mr. JEFFORDS. Thank you very much.
I will reserve questions.
Please proceed.

STATEMENT OF ARTHUR L. BERMAN, STATE SENATOR, 11th DISTRICT, ILLINOIS; CHAIRMAN, SENATE ELEMENTARY AND SECONDARY EDUCATION COMMITTEE, AND, CHAIRMAN, ILLINOIS SCHOOL PROBLEMS COMMISSION

Mr. BERMAN. I am Arthur L. Berman, State Senator from Illinois. To my left is Jim Jepson, head of our staff committee for the Senate Committee on Elementary and Secondary Education in Illinois.

I also serve as the Chairman of the Illinois School Problems Commission.

To give you some background for the testimony which we are presenting today and which I will only summarize because of the time limitations, speaking for myself I am totally in agreement with the goals of 94-142. I think that the testimony that I have heard today sitting in this room indicates that there are few of us who have had any exposure to either education or the handicapped who do not subscribe to these goals wholeheartedly.

I am here today to share with you a little bit of my experience. I heard before that you have been in the State legislature so that you have had experience at the State level with the problems that we have regarding the relationship between local school districts and the state in funding and programing.

In July 1976 I chaired under the Illinois School Problems Commission a committee to produce legislation to bring Illinois into full conformity with 94-142.

For about 8 months we held hearings, drafted legislation, and in February of this year I introduced in the Illinois Senate approximately 20 bills to bring Illinois into full conformity.

I would point out that notwithstanding the 20 bills, Illinois probably is in more conformity with 94-142 than is the great majority of States throughout the country. We have had a mandatory special education law on our books since 1965, implemented in 1969.

So, even with a large number of bills in Illinois, Illinois is not in bad shape. Illinois has made a substantial contribution programwise and financially to the full education of our handicapped children in that State.

I would point out that after the introduction of these bills in the Illinois Senate as a result of substantial and meaningful questions by our executive branch, by people in the field, by all areas of the special education community, these bills which I got out of my own committee onto the floor had to be recommitted back to my committee because of substantial questions and, I must say, substantial opposition.

As I pointed out as the chairman left the room, I am here as a supporter of the goals but I think it is important to recognize that in order to reach those goals you have taken, and I congratulate you for it, the carrot approach; 504 requires us to provide a free and appropriate education to handicapped children. If we want to stay where 504 is you would not have needed to pass 94-142. My reading of it is that 94-142 goes farther than 504 does. You have recognized that and you have put some money behind it.

Now the question is, are the States going to cop out and settle at the 504 level or are they going to respond to the admirable approach of Congress, seek your money and come up to even a higher

level that you have recommended through 94-142 and the rules and regulations of it?

I find with some reluctance a hesitancy on the part of my fellow colleagues in the Illinois Legislature to say, "It is great, let us go ahead, pass everything into full conformity."

In fact, the plan which has been submitted by Illinois, which has been approved by HEW, says that Illinois is not in conformity with 94-142 this year and that there is legislation pending to bring us into conformity.

I am the sponsor of that legislation and I am not sure I can get that passed, Mr. Chairman.

Let us talk about dollars for a moment and I think we all recognize the problems that many of us have in dealing with dollars. I am not here to ask you to quadruple the authorizations. That would be very nice for me to say so, but I don't think you would be willing to go back next year and run for reelection and say that you have done that. I think that we have seen throughout the country and especially in Congress and the local districts, a fiscal conservatism.

Now I am recommending amendments. I am recommending amendments because I want to see 94-142 goals achieved. I am recommending amendments because I think that we have to recognize that when one of the preceeding witnesses talks about problems at the local level, what he is talking about is that there isn't money at the local level, without substantial increases in local real estate taxes, to do what 94-142 says we must do, and that is a serious problem.

I don't know if the papers in Washington or in Vermont have carried some of the problems that we have had in the Cook County, Chicago area, but we have had substantial increases in local real estate tax bills and there has been a lot of reaction to this.

Many of us who have to run for reelection next year are recognizing this. It is not a revolt but certainly great dissatisfaction as far as local real estate taxes are concerned.

Let me put that in perspective.

According to our office of education the mandate of 94-142 for next year, not 3 or 4 years down the line but next year, would have to require an increase of $120 million in local property taxes. That would be an increase of double the increases that were imposed on local real estate taxpayers in this last year as a result of increased tax bills. They are not going to sit still for that, Mr. Jeffords. I know that you and each one of your colleagues that are going to be out seeking votes next year recognize that and I recognize that because I will be out there with you seeking votes.

So what we have suggested in our testimony here, and there are 10 specific recommendations, is that the financial requirements that are being imposed on the State and on the local level be recognized as a serious problem, and without compromising the goals that we actually make the bill more workable and a greater incentive for States to subscribe to the requirements of 94-142.

For example, our first recommendation is that if we are going to have a partnership that that partnership be in fact a partnership, that as you phase-in your funding up to a level of 40 percent, the

State be allowed to phase-in its programs up to its 100-percent match of the mandates of 94-142.

You can't move faster and I understand in previous testimony comments came from the committee that the reason for the level of either percentages or total dollars was because you could not pass a bill if we reached for pie in the sky.

I understand that. But we have those same problems on the local level. I think that we build false hopes if we just hand out mandates and don't say where that money is coming from.

We are asking that between now and 1982 that the mandates of 94-142 upon the States and local education agencies be phased-in in the same ratio that your funding is phased in and after 1982 that your commitment be continued.

If it is not continued there will be no determination of any violations by the LEA's or SEA's because again it is going to take money to accomplish these goals.

We have made a series of other recommendations. I am sure that you have read the testimony. It goes through a large number of them. I won't take your time to read through them but there are another nine recommendations in addition to what I have indicated here.

In conclusion, Congressman Jeffords, what I would respectively point out is that I would like to go back to Illinois and say that the 20 bills that are residing in my committee should be passed because we are going to get a response from Washington that recognizes the fiscal impact of this bill, that Illinois, as it has in the past, wants to stand forthright in support of the goals of 94-142, shoulder to shoulder with our Congressmen who have laudatorily passed this bill, that we are in full agreement with it and we all want to work together, Washington, Springfield, Ill., and everyone of the local school districts., in achieving these goals but we want to do it realistically. We want to do it without bringing any false hopes or recommending a situation that is going to wind up with a lot of litigation.

We also want Illinois to come into conformity with 94-142, get the Federal funding, but even more importantly, achieve the goals pronounced in 94-142. We don't want to stay only at a 504 level.

I am apprehensive that without some response by Congress as to the problems of funding these programs that that is where we may find ourselves not only in Illinois but in many other States.

Thank you Mr. Chairman.

[Statement of Illinois State Senator Berman follows:]

STATEMENT BY SENATOR ARTHUR L. BERMAN, CHAIRMAN, ILLINOIS SENATE ELEMENTARY AND SECONDARY EDUCATION COMMITTEE, ILLINOIS SCHOOL PROBLEMS COMMISSION, TO THE HOUSE SUBCOMMITTEE ON SELECT EDUCATION, SEPTEMBER 27, 1977

Mr. Chairman and members of the Subcommittee, I would like to begin by thanking you for this opportunity to testify before this subcommittee regarding the implementation of the Education for All Handicapped Children Act, Public Law 94-142. I appreciate very much this opportunity to express our hopes and concerns regarding this legislation. The members of this subcommittee should be complimented for holding these hearings. These hearings reflect the subcommittee's deep commitment to the needs of our handicapped children and the effective implementation of Public Law 94-142. Your commitment and understanding is appreciated by all of us.

As Chairman of the Illinois Senate Committee on Elementary and Secondary Education and the Illinois School Problems Commission, I certainly share your

commitment to insuring that a free appropriate public education be available to all handicapped children. The people of Illinois, I believe, also share this commitment to meeting the educational needs of our handicapped children. The following provision in the 1970 Constitution reflects this commitment: "A fundamental goal of the People of the State is the educational development *of all persons to the limits of their capacities.*"

Even before the adoption of the 1970 Constitution, however, the Illinois General Assembly had approved legislation which required school districts in Illinois to provide special education services to eligible handicapped children ages 3 to 21 by July 1, 1969. In order to implement this requirement, substantial state and local resources have been allocated to special education programs. In fiscal year 1971, $45.6 million in special education categorical grants was appropriated to reimburse school districts for the excess cost of providing special education services. In fiscal year 1978, $162.6 million has been appropriated for special education categorical grants—almost a four-fold increase.

In addition, general funding for elementary and secondary education, including special education has increased significantly over the last several years. Table I summarizes the state and local support for elementary education since 1972.

TABLE I—STATE AND LOCAL SUPPORT FOR ELEMENTARY AND SECONDARY EDUCATION
[In millions]

	Fiscal year—					
	1972	1973	1974	1975	1976	1977
State	$922.6	$1,104.4	$1,231.3	$1,469.4	$1,567.7	$1,719.8
Local	1,155.0	1,320.3	1,377.3	1,440.1	1,475.4	1,541.2
Total	2,077.6	2,424.7	2,608.6	2,909.5	3,043.1	3,261.0

Note: Excludes capital expenditures at all levels. Local revenue has been adjusted to reflect taxes collected; fiscal year 1977 local revenue is estimated.

As a result of this commitment, Illinois has long been a leader in the development of special education programs to meet the needs of our handicapped children. Thus, during the 1976–77 school year, approximately 224,300 handicapped children were provided special education services by elementary and secondary school districts in Illinois. An additional 2,900 children who qualify for federal assistance under PL 89–313 were served by other state agencies. In FY 78, it is estimated that $512.7 million in state and local funds will be spent for special education programs provided to these children by our elementary and secondary schools. This State and local support for special education in Illinois is summarized by Table II.

TABLE II.—*State and local support for special education, fiscal year 1978*

	Millions
State:	
General State aid	$145.1
Categorical grants	162.6
Subtotal	307.7
Local district revenues	205.0
Total	512.7

We in Illinois support Public Law 94–142 as landmark legislation which has reaffirmed the right of handicapped children to an adequate education. The School Problems Commission and the Senate Elementary and Secondary Education Committee have already held numerous hearings concerning legislation designed to implement the provisions of 94–142 in Illinois. We believe, however, that there are serious problems which must be addressed if we are to fulfill the promise of this legislation.

First, there is a serious contradiction between the mandate to provide a free appropriate education for all handicapped children and the level of federal assistance provided by 94–142. Our commitment to the promise of 94–142 will be measured by the level of financial support we provide for these programs, not our lofty rhetoric. Without adequate financial support, 94–142 will provide only unfulfilled

promises and continued neglect. The need to back our commitment with adequate funding was recognized in 94-142 by the following statement:

"State and local educational agencies have a responsibility to provide an education for all handicapped children but present financial resources are inadequate to meet the special educational needs of handicapped children."

Even if the appropriations approved by Congress reflect the full authorization, I would suggest that the level of funding provided by 94-142 does *not* reflect Congress' recognition of the States' financial resources.

Our efforts to improve the educational programs provided to children in Illinois are already hampered by the State's fiscal problems. For example, the primary source of State financial assistance to school districts for the education of all elementary and secondary students, including handicapped children, is provided by the State's general state aid formula. The $1,290 billion appropriated for this purpose under the Governor's FY '78 budget will provide an increase of only 3.1% in state aid to school districts in the 1977-78 school year. As a result, the general state aid formula is funded at only 95.1% of the statutory requirements; an additional $66 million is needed to fully fund the general state aid formula in FY 78.

In addition, in spite of the significant increases in the appropriations for the special education categorical grants in FY 78, these grants have been funded at only 93% of the statutory obligations. An additional $13 million is needed to fully fund these statutory formulas in FY 78. I have mentioned these problems only to emphasize the fact that any decision to impose new mandates must be considered in the context of available resources and other demands on these resources.

The Illinois Office of Education has estimated that if local school districts are able to fully implement the mandates of PL 94-142 in the 1978-79 school year, state obligations for special education categorical grants could increase approximately $117 million. This represents an increase of 72% over current appropriations for these grant programs. General state aid obligations could increase approximately $40 million. It should be noted that the State appropriations for all elementary and secondary education programs in FY 78 increased only $69.4 million—less than half the $157 million in additional State funds which may be required to fully implement the mandates of PL 94-142. In addition, the Illinois Office of Education has estimated that full implementation of PL 94-142 in the 1978-79 school year would require almost $120 million in additional local property tax revenues. This is almost twice the increase in local property tax revenues provided to school districts between FY 76 and FY 77. Increases in the funding of special education programs of this magnitude can be provided only by reallocating resources from other programs or by increasing state and local taxes. I don't have to tell you how popular either of these proposals is among our constituents.

Approximately $14 million will be provided to Illinois under 94-142 in FY 78 to assist local school districts in meeting these costs—roughly $70 per handicapped student. This represents only 3% of the estimated $2300 in state and local funds which will be committed to special education children by elementary and secondary schools in Illinois. If the FY 79 appropriation reflects the full authorization provided in 94-142, approximately $30 million will be provided to Illinois for the 1978-79 school year. We do not believe that the level of funding provided under 94-142 reflects either the moral committment or fiscal requirements to provide a free appropriate education to all handicapped children. Therefore, we would recommend that the following modifications be made to 94-142:

(1) Phase-in the mandate of 94-142 to insure that a free appropriate public education is available to all handicapped children, to reflect the level of federal support provided under the Act, with full implementation delayed until 1982, and specify that after 1982, no state or local education agency shall be obligated under 94-142 to insure that a free appropriate education will be available to all handicapped children in any year in which the state does *not* receive a grant equal to the number of handicapped children receiving special education and related services multiplied by 40 percent of the average per pupil expenditure.

The amount of the federal grant provided to each state does not reflect the actual cost of educating children in that state. The amount of the grant provided to each state is based on the average per pupil expenditure in public elementary and secondary schools nationwide. This formula fails to recognize differences in the cost of educating children in different states and the committment these states have made to meet the educational needs of their children. In effect, it penalizes those states which must spend relatively more than other states to provide a free appropriate education to their children. In addition, although some states may provide educational services for children between the ages of 3 and 21, the maximum number of children they may count for he purposes of calculating their federal

grant is equal to 12% of the number of children between the ages of 5 and 17. We would recommend that the following modifications be made to 94-142:

(2) Provide that the amount of federal grant provided to each state shall be based on that *state's* average per pupil expenditure in its public elementary and secondary schools rather than the average per pupil expenditure in the United States.

(3) Increase the maximum number of children who may be counted for the purpose of calculating the federal grant provided under 94-142 to allow each school district to count up to 12% of all children between the ages of 3 and 21 for whom special education services are provided rather than only those children between the ages of 5 and 17.

Presently, each state is required to distribute the federal grant provided under 94-142 to local education agencies based on the percentage of all handicapped children in the State who receive special education and related services in that local education agency. This flat grant formula for distributing these federal grants undermines Illinois' effort to equalize the resources available to elementary and secondary school districts. In addition, it does not allow the state to distribute these funds based on the differential cost of providing programs to handicapped children with different educational needs. This contradicts the basic principle of an individualized educational program. We would recommend the following change in the distributive formula:

(4) Allow each state to develop a formula for distributing the funds provided under 94-142 which included provisions for the equalization of resources available to the local education agencies and special weightings to reflect the differential cost of providing services to children with different program needs.

94-142 provides that children not now served must be the first priority for the receipt of federal funds regardless of the severity of their handicap, or the adequacy of services provided to children with more significant handicaps. The state and local education agencies should have the authority to allocate the federal funds provided under 94-142 to meet the special needs of the children they serve. The authority to set priorities at the state and local level is particularly important given the limited federal funding provided under 94-142 during the next few years. We would recommend the following change in 94-142:

(5) Eliminate the "priorities" established in 94-142 for the allocation of funds and authorize the local education agencies to establish priorities for the allocation of these funds subject to approval by the State educational agency:

The requirements of 94-142 concerning the individualized education program, the census of handicapped children, the annual evaluation, and the reports required by HEW will impose a significant administrative burden not only on the states but also on local education agencies. No federal assistance to local education agencies is provided for these administrative costs under 94-142. In addition, the state education agency is required to develop a comprehensive personnel development program.

The effective implementation of concepts such as the "least restrictive environment" and the "individualized education program" and the ability to comply with the various administrative requirements such as the procedual safeguards will depend on having adequately trained personnel. We would recommend the following modifications to 94-142.

(6) Authorize local education agencies to use up to 5% of their allocation of federal funds under 94-142 to cover administrative costs.

(7) Provide additional federal support for the personnel development programs to insure that all personnel are adequately prepared to implement the requirements of 94-142.

Beginning October 1, 1977, state and local education agencies must comply with very detailed and complicated requirements concerning the development of a state plan, individualized educational programs, programs for personnel development and annual evaluations. Final rules and regulations concerning these requirements, however, were not approved until August 23, 1977. In addition, it is my understanding that state educational agencies have not been able to obtain adequate and timely technical assistance from HEW in their efforts to comply with these requirements. State and local education agencies, in effect, are required to make extremely important decisions without adequate information and to comply with very detailed and complicated mandates without adequate time to prepare for their implementation. To try to impose such complicated and comprehensive requirements on state and local education agencies under these conditions is, I believe, extremely unrealistic.

(8) More adequate and timely assistance from HEW should be provided to state and local education agencies in their effort to implement requirements of 94-142 and Section 504 of the Rehabilitation Act of 1973.

94-142 establishes a very comprehensive definition of a "free appropriate public education". In particular, the definition of related services is extremely broad. It could conceivably be interpreted to include almost anything that would benefit a handicapped child. As such, it expands the responsibility of state and local agencies well beyond their primary responsibility to provide an education for our children. The inclusion of medical/health services and room and board payments as "related services" are just two of the more obvious examples of this problem. Therefore, we would like to make the following recommendation:

(9) The definition of related services should include clear parameters which limit the state and local education agency's responsibility to services which are directly related to the educational needs of our handicapped children.

Room and board expenses are presently included in the definition of a free appropriate education. There is some concern among officials in Illinois that eligibility for insurance and social security benefits for expenses will be jeopardized if this becomes a state obligation. Nonavailability of these third party payors would be a windfall to these payors and an additional financial calamity to the State. Therefore, we would like to make the following recommendation:

(10) The impact of PL 94-142 on the availability of third party payments should be monitored very carefully to insure that third party contributions (i.e. insurance and social security) continue to be provided to cover these expenses.

In closing, I would like to reaffirm our committment in Illinois to the goals of Public Act 94-142. We will continue to improve our special education programs to insure that every handicapped child has the opportunity to develop to his or her full potential. We welcome the federal government's commitment to that goal. We are concerned, however, that without adequate financial support to meet the mandates included in 94-142, and given the unnecessary restrictions contained in the Act, many states may decide that the interests of the State, and the needs of their handicapped children can be best served by not participating in 94-142.

If this happens, 94-142 will only result in unfulfilled hopes and empty promises. We urge you to provide state and local education agencies the resources to meet the special needs of our handicapped children. With your help, we can fulfill the promise of 94-142 and insure that all children have the opportunity to develop to their full potential.

Thank you for your consideration.

Mr. JEFFORDS. I would just like to point out that you are preaching to a choir, if one person can be considered a choir.

I am afraid that there are many who do not perceive the local problem as you and I do. Just this past week Vermont has had two school districts defer any 94-142 action because they have said, "We don't have the money to spend on them. We have been to the taxpayers too many times."

I sense a growing resentment against the handicapped, which disturbs me greatly. More important now is the 504 regulation. That is where I feel strongly that Congress has to live up to its commitment, and fund its mandate.

I would agree with both of you. If we say "You have to be fully implemented on one schedule and then we will meet our partnership requirement sometime further on in the future," they will say, "Well, we are doing it all right now, we have been able to comply, so why should you bother to raise this 40 percent?"

Why not bring it down to 20 or even 5 percent. I am concerned that we will run into this problem. Related to that I would like to ask some questions on 504. After talking to Secretary Califano, it seems that the present plan is to spend this year gathering information and data on what the cost implementation will be, and perhaps developing some recommendations for funding in fiscal year 1979.

I wonder where that leaves you, and whether you feel that is going to cause serious problems in your State?

Mr. BERMAN. Just last week I met with our office of education leadership and with our bureau of the budget leadership, a representative of that office being right behind me, Joan Williams.

I asked them to prepare for me and the legislature a comparison chart. What will 504 cost Illinois over and above what we are presently spending and what will 94-142 cost Illinois over and above what 504 would require Illinois to do? We don't have those figures yet.

I will tell you this. My impression is that again because of fiscal restraints those figures, and I have asked that they be out before our Christmas holidays so that we will have something to read over the holidays, I think that many legislators, because of the tax situation, because of the fiscal constraints, are going to look at that chart and they are going to say if it is going to cost Illinois $50 million to comply with 94-142, more than what it would cost Illinois to comply with 504, if that is hypothetically the case and we are only going to get $30 million from Washington to do that, they don't want to do it. That may be a serious problem.

Mr. JEFFORDS. You are not at all concerned that OCR may say, "As far as we are concerned 94-142 is a minimum for appropriate education, and if you don't implement 94-142 we will use 504 to make sure you do it or cut off all your HEW funds?

I am not so sure that this will not happen. I could not get an answer out of the commissioner of education.

Mr. BERMAN. I noted your question and I was waiting for the answer. I was not sure what came forward. My interpretation and the people who have studied it more seem to imply that 504 has a lower threshold of achievement than 94-142.

My impression, and you can answer this and your colleagues better than our guesswork, is if 504 is not lower, so-to-speak, than 94-142 why did you pass 94-142? My impression is that you wanted to move upward and that is why you put money into 94-142. I view it from that approach.

I will be pleased to be educated along those lines.

Mr. JEFFORDS. Do you have any comment?

Mr. CAMPBELL. Our reading of 504 relative to 94-142 is that the big problem is going to come in conflict timewise. We expect to be in substantial compliance with 94-142 throughout the State by next September. There are some phase-in problems in matching with our master plan for special education. We expect to get those resolved.

Our master plan for special education is a way of doing 94-142 in California. We are getting signals in California that 504 is going to go into effect right away. If that is true then we have very serious problems because I don't think any State in this country is prepared to implement the educational program component of 504 immediately, particularly since we are on a time line set down by the office of education which talks in terms of next September for 94-142. We have to get those kinds of conflicting things resolved.

Once those things get sorted out we don't have any problem with the educational program components of 504 in the schools.

The implications, particularly the cost implications, of the other requirements of 504, facilities and other sections, is something we

don't have information on yet. We have not developed all the cost data on it yet. I expect it will be substantial.

Mr. JEFFORDS. Will you send me a copy of the cost data when you get it?

Mr. BERMAN. Yes.

Mr. JEFFORDS. When do you expect to have your cost data?

Mr. CAMPBELL. We have people working on it now. We expect to have it in the near future.

Mr. JEFFORDS. I would appreciate it very much. We are trying as rapidly as we can. We were hoping to have enough testimony before the supplemental appropriation bill this year. I want to remind you, with our new Budget Act, we must have any kind of authorizing legislation passed by May 15. So, we have to work very fast in the second session, to have any hope of providing you financial assistance when you really need it. I am hopeful that we can.

Let me ask you a question.

For better or worse, I am somewhat responsible for the requirement in the law with respect to due processes.

I am wondering if you can tell me how the 94-142 due process requirements are affecting your own administrative procedures, whether or not you can live with them, and whether or not they will cause you serious problems.

Mr. CAMPBELL. In California we have two parallel systems going right now. We have a traditional special education delivery system which is composed of a very rigid set of categories of funding.

Then we have our master plan for special education that is in 10 areas of the State now. Our legislature has just enacted a law which will expand the master plan statewide by 1981. So we are in good shape. The master plan due process, State procedural safeguard section is compatible with 94-142, the basic intent of both laws is the same. That is not a problem.

Because our master plan has been in effect in the pilot 10 areas for 3 years in California, other districts have been watching the due process parts of that very carefully. So there is a heightened sense of awareness of what those due process things are about in other areas of our State which allows us, we hope, to make the transition statewide into those due processes procedures fairly smooth by next September. Had we not had that experience it might have been a different story. At least in our State I feel we are going to be able to make that transition fairly smoothly.

It is difficult and it is new for school people but we think we are going to make it.

Mr. BERMAN. In Illinois our rules and regulations presently are very close to the requirement due process-wise of 94-142. We have very little problem. I think the only two items we noted in our plan was the requirement for development of the IEP within 30 days after identification. That time line we felt could cause problems.

Then the question which I think was alluded to by a previous witness was that the hearing officer's decision is final.

Again neither one of those caused any difficulty but those are the only two main points that there are a difference. In other words, we are right on line with the due process procedures already.

Mr. JEFFORDS. Thank you.

I want to say that your testimony is some of the finest we have had, providing detail and the kind of specific information we need, in order to decide whether or not we should make changes at this time.

I certainly appreciate your efforts, and those of the other witnesses who have presented excellent testimony this morning.

Thank you very much.

With that we will be adjourned.

Mr. BERMAN. Thank you.

[Whereupon, at 12:05 p.m., the subcommittee adjourned subject to the call of the Chair.]

APPENDIX

STATEMENT OF THE NATIONAL EASTER SEAL SOCIETY FOR CRIPPLED CHILDREN AND ADULTS ON THE EDUCATION OF THE HANDICAPPED ACT, (PUBLIC LAW 94-142)

The National Easter Seal Society for Crippled Children and Adults appreciates this opportunity to present its views to the Subcommittee during these oversight hearings on the implementation of P.L. 94-142.

As pioneers in special education for physically handicapped children, we have had a long and sustained interest in promoting special education laws in many States, underwriting salaries of personnel in State education departments, operating special classes, establishing programs for homebound and preschool children and promoting the recruitment and training of special education teachers.

In recent years we have supported Federal legislation to advance education programs for handicapped children. 11 years ago, in addressing a House Ad Hoc Committee on the Handicapped, we stressed the inadequacy of services to handicapped children, still the weakest link in the public school system. We are pleased that most of the recommendations are now incorporated in the Education of the Handicapped Act.

Implementation of this law is now proceeding. Deadlines for compliance in order for States to receive Federal assistance are established. We anticipate that substantial progress will be made in serving handicapped children as a result of this significant and thoughtfully formulated Act. While it offers great promise, if it is to meet its objective of providing a free and appropriate public education to all school age handicapped children there are some deficiencies which require correction, refinement and clarification.

PROVISIONS REQUIRING CLARIFICATION

We would like to comment on the following terms which are defined in Section 602(4):

"Related services"
"Individualized education program"
"Free appropriate public education"

1. "RELATED SERVICES"

Include supportive services which are required to assist a handicapped child to benefit from special education. Many of these services are of a medical or rehabilitation nature such as medical services for diagnostic and evaluation purposes, physical, occupational and speech therapies, and psychological services.

In defining "free appropriate public education" the law states that "special education *and* related services" must:

1) Be "provided at public expense under public supervision and direction . . ."
2) "Meet the standards of the State educational agency . . ."
3) "Are provided in conformity with the individualized education program . . ."

These requirements pose problems and raise questions since they apply to both special education *and* related services. There is no question that the educational agency should set standards and supervise and direct special education programs but there are serious questions as to whether this same authority is applicable to medical and physical restoration services:

What is the role of medical and rehabilitation personnel in supervising and directing medical services for diagnostic and evaluation purposes, physical therapy, occupational therapy, speech pathology and audiology and psychological services?

Does the educational agency set standards for medical and rehabilitation services?

If so, how do the standards relate to standards set by other State agencies, for example, the Crippled Children's Services and licensing agencies?

We are certain that Congress considered these issues and from a reading of the legislative history, we do not believe it intended *educational personnel* to supervise, direct and set standards for medical and rehabilitation care.

We recommend this issue be clarified in the law or regulations. Clarification should include requirements that medical rehabilitation personnel participate in the evaluation of handicapped children and determine the program and standards of care for the child regarding all medical rehabilitation services.

2. "Individualized Education Program"

Under the term "individualized education program", the statute makes reference to "the present levels of educational performance", "the specific educational services to be provided", the "initiation and anticipated duration of such services" and of instructional objectives. No reference is made to the present level of physical impairment, to the rehabilitation services required, to the duration of such services, or to the rehabilitation objectives.

We question that if related services may be required to assist a handicapped child to benefit from special education, why for example is the content of the individualized educational program restricted to instructional objectives and no mention made of objectives to overcome physical impairments?

Why are physicians and other rehabilitation personnel excluded from the disciplines which develop the individualized education program for the handicapped child?

We recognize that the primary concern of the law is with education and that related services, though important, are secondary. Since the latter are included in the term "free appropriate education" there should be recognition of related services in the development of the individualized education program. The final regulations issued recently do not deal with the questions we are raising despite our comments to the agency on these matters.

We strongly recommend that these issues be clarified in the final regulations or by amendments to the law.

3. "Free Appropriate Public Education"

We note that the State and the Federal education acts for handicapped children emphasize the right of handicapped children to a free appropriate education, and, may we add, rightly so. Education has always been a public responsibility and made available at no cost to the parent, but there is nothing in the Federal statute which prohibits educational agencies from contracting with non public agencies to provide special education and related services so long as they meet State standards. We believe it was Congress intention to guarantee an education to those who are presently unserved or inadequately served and in doing so, to provide the most appropriate service available. The partnership which has existed between many public school systems and community agencies serving the handicapped should be continued. Many of these community programs have the expertise that the public school system will have to develop. They represent an important alternative and resource to the public school system. The programs they offer go beyond cognitive learning and include a wide range of physical restoration services, parent education and involvement and treatment of psychological deficits frequently associated with physical disability.

It is unrealistic to believe that the public school system, as currently organized, can provide the same high quality comprehensive and integrated education programs and related services that are now available in many communities through private and non-profit resources. It will take time for the public school system to develop this capacity and to offer effective programing of a quality which matches the caliber of some of these resources.

In addition, there will always be situations, for example, for multihandicapped children, in which an appropriate education will be available only through programs operated outside of the public school system. Children should be able to take advantage of the best services available to them whether under the aegis of the public school system or not. Yet in practice, handicapped children are being placed in public school settings which do not provide optimal services.

Mainstreaming and Early Childhood Education

I would like to discuss briefly two related issues which are of concern to parents and professionals—mainstreaming and early childhood education. In a presentation at the National Easter Seal Society Convention in November, 1976, Eugene McDonald, a psychologist and consultant to the Pennsylvania Easter Seal Society, pointed out that "the current effort to desegregate the handicapped and to get them into the mainstream of life is laudable; however, we must in our efforts to 'mainstream' the handicapped child be sure that we are not reducing rather than enhanc-

ing the likelihood that the child will be able to cope effectively as an adult in society."

"If desegregation is carried to the extremes of eliminating all centers including those which were established to meet special needs of handicapped persons, many handicapped persons will receive superficial services provided by minimally trained and inexperienced persons . . .". "When the needs of children" he added, "can be adequately met in a desegregated facility, by all means that is where the child should be enrolled."

Early Childhood Education

We regret that the Education of the Handicapped Act did not include mandatory services for handicapped children 3 through 5 years of age. Instead, it established incentive grants to States to encourage service to this venerable group, the majority of whom have multiple handicaps. Preschool programs for children in the 3 to 5 years old age group have proved to be invaluable when comprehensive and integrated programming is provided by experienced and well trained staff. Such programs presently are not available through the regular public nursery school or kindergarten.

Handicapped children have experiential deficits which can be decreased or eliminated by early childhood education, socialization and rehabilitation programs. Their progress is most rapid when such services are provided during their early years. An added benefit is that they enhance the ability of handicapped children to enter the regular public school system.

We concur with the views of Senators Stafford, Javits, Kennedy, Schweiker and Hathaway. They stated: "To delay the delivery of those services because of restrictions of State law or practice is neither reasonable nor wise". They disagreed with the action taken by the full Committee when it dropped the mandate for 3 to 5 year olds during consideration of S. 6.[1]

We recommend the mandatory inclusion of all handicapped children ages 3 to 5 in special education programs.

The National Easter Seal Society appreciates this opportunity to present its views and assures you of our whole-hearted cooperation in supporting your efforts to improve services to the handicapped.

Statement of the National Education Association on Public Law 94-142, the Education of All Handicapped Children Act, Before the Subcommittee on Select Education of the House Committee on Education and Labor, Oct. 6, 1977

NEA has a longstanding commitment to the best possible public school education for handicapped children, and we are pleased that the Congress and the courts are now responding to the needs of handicapped children. NEA supports these efforts and was proud to play an active role in helping PL 94-142 on its path through the legislative process.

We applauded the enactment of PL 94-142. We affirm the obligation of the public schools and public school teachers to provide wholesome educational experiences for all children, handicapped and otherwise. We don't see how anybody can oppose this. But we believe that Congress must do more than merely proclaim a responsibility. It should also give substance to the hope it offers by helping the people who labor in the vineyard to do the job.

Unfortunately, we can't talk to you about quality and equality of education without talking about money—and that's something that is in short supply in school districts around the nation. School districts are confronted by a fiscal crisis created in part by an eroded tax base at the local level, inflationary costs, and solid taxpayer resistance to ad valorem property taxes for school.

Local school districts all over this country are cutting programs because of a shortage of funds. PL 94-142, as well-meaning and necessary as it is, adds awesome new responsibilities which demand even more funding from state and local school districts to meet new federal mandates.

Congress has now imposed a new spending obligation on school districts which are already approaching bankruptcy. Full implementation of PL 94-142 will cost bil-

[1] Education of the Handicapped Act as amended through December 31, 1975. Prepared by the Subcommittee on the Handicapped of the Committee on Labor and Public Welfare, U.S. Senate, August 1976, page 270.

lions of dollars; and Congress is not offering nearly enough to help states and locals provide the services which are promised by the law.

As best we can tell, the formula for funding the state grants for education of the handicapped was drawn from theory and not experience. It in no way reflects the history of educating the handicapped. Because of its arbitrariness, the formula is totally inadequate.

Our greatest concern is the five percent first-year authorization. Estimated average per-pupil expenditure nationally for school year 1976–77 is $1350. Assuming that that figure won't alter much this year, the five percent that would be added on for each handicapped child comes to less than $70. We submit that $70 is going to provide blessed little in the way of specialized educational services to a handicapped child.

If the intent of the law in providing the five percent were only to enable state and local education agencies to seek out and diagnose handicapped children in the first year of the law's operation, it might suffice—barely. But it is our interpretation that the law contemplates not only preliminary identification of handicaped children, but also the initiation of remedial programs and services for them.

Further, those programs and services which are supposed to be financed by the $70 per child are going to be of the most expensive sort. The law's priority on first meeting unmet needs implies that the initial programs will have to be brand new ones—with all that that entails in terms of facilities, equipment, and personnel—since presumably there are currently no programs for these target children.

We recommend that funding to the states be set at 40 percent from the outset of implementation. Although we are unconvinced that even that yield of approximately $550 per child is fully adequate, it is a more realistic figure for designing and implementing effective programs.

At the risk of sounding negative, we would like to point out some pernicious effects that gross underfinancing will have on the promise of PL–142. Low funding will force state and local education agencies to choose from a variety of undesirable alternatives. At worst, they could refuse to participate in the program at all. On the other hand, they can compensate for inadequate federal funding by cutting other services, laying off teachers, and slashing other programs which would undermine the quality of educational services provided for all children.

Such cutbacks in school programs will surely generate hostility and outrage in the parents of normal children, parents of handicapped children, and teachers toward this noble effort which the Congress undertook in the best of faith. What the Congress has endeavored to do might well boomerang and turn out to be counterproductive unless the Congress walks a fuller mile to carry out its promises.

And that fuller mile has to include money. Money is the only thing that is going to mitigate the burdens of implementing the law as written.

Money is needed to adjust class size so that each child can get the attention he or she needs in a near-normal situation. After all, adding three or four handicapped students to a class that's already too big—say 37 or 38 students—is going to create enormous problems for both handicapped and nonhandicapped students and their teacher.

As this law becomes operational, technical assistance and special expertise will be needed. There will have to be resource people available to assist regular classroom teachers in designing and implementing instructional programs for handicapped students, and for integrated classes.

Yet we have indications from various parts of the country that school boards are, ironically, considering the enactment of PL–142 as an excuse to fire special education teachers. The twisted logic for this startling conclusion is that since handicapped students are to be mainstreamed, or placed into the least restrictive environment, the regular teachers will handle them, and therefore, special education are a frill. We know and you know that this was not the intent of Congess, but we can assure you that it will happen. It's a lot like instituting a health education program in the schools and then firing the nurses and other health specialists.

Probably the biggest and most important remedy that money can provide is in the area of teacher training. A critical component of effective teaching programs is, of course, adequate, fully trained staff. The law so states and requires that state plans provide for training of teachers and diagnostic personnel in instructional procedures and methods.

But this law earmarks no funds for such training. What is funded, through another manpower development program, is some $31.5 million—which is projected to provide preservice training in special education for fewer than 1,200 individuals. Those 1,200 folks are hardly going to be able to serve a handicapped student population estimated at well over eight million.

Consider also that much specialized pretraining has always been required to become fully qualified in the area of teaching those with any one of a number of handicaps—hearing or vision impairment, orthopedic problems, and the like. For example, 1974 Florida certification procedures required those preparing to teach the hearing impaired to take 24 academic course hours in addition to basic degree work; those preparing for the visually impaired needed 18 *extra* hours. It takes much study—and therefore time and money—to become a qualified special education teacher. This law suggests that teachers with no special training will be asked to deal with a multiplicity of handicaps, provides little help in training, and permits school boards to discharge special teachers who might help.

It is obvious to us that, before both first priority and second priority handicapped students are served by the law, regular teachers must learn what they need to know to teach handicapped students. Preservice teacher education up to now has not been designed for this purpose. And so inservice education is absolutely necessary if programs and services are to meet the needs of handicapped children.

Funds budgeted for this type of inservice training in special education for Fiscal '78 amount to some $8.5 million to provide training for not quite 13,000 regular classroom teachers. A school district the size of Philadelphia has about 13,000 teachers. In New York City, there are around 51,000 classroom teachers. And there are right around 2.2 million teachers nationwide—most of whom presumably will be affected by the scope of PL 94-142. Most of them need training.

According to our arithmetic, that $8.5 million to train 13,000 teachers works out to about $650 per teacher. Applied to 2.2 million it yields $4 per teacher. Yet we noticed in the *The Washington Post* that our government is considering giving $2.1 million to Zaire to train the teams to operate the ten M60 tanks we're selling them. With four-member tank teams, we're spending more than $50,000 *each* to train Zairians to run a tank. We certainly question an expenditure which seems to imply that teaching children successfully is less difficult and less valuable that operating a tank.

We believe that inservice training for all regular classroom teachers is absolutely esential so that the law will be fulfilled. We also believe that such active classroom teachers should be involved in the development of training programs so that programs are pertinent to their needs and anxieties about teaching the handicapped and the non-handicapped simultaneously.

Such inservice training for teachers of the handicapped could become the raison-d'etre for the newly authorized Teacher Centers program. This program, which is designed to provide on-site, teacher-run, career development programs for teachers, will be tooling up in Fiscal '78. The Teacher Centers could prove their worth and provide valuable aid to teachers who are preparing to deal with extensive requirements of PL 94-142.

Due to the law's priority on meeting unmet needs, state and local education agencies will be forced to expend meager available resources for tangible and observable obligations to the law. This means neglect of the training function. This is no more and no less than trickery of the public. How are we going to meet unmet needs if we don't have people who know how to meet those needs? It is totally illogical to contend that existing unmet needs can be met without putting up the money to equip people to fill those needs.

Yet state and local resources are not available to provide this training. Federal monies must fund these essential activities or else they will not be funded.

One suggestion might appear too simple and too self-serving, but if all funds which are appropriated were earmarked for the employment of additional teachers or the training of teachers, then this would have to result in smaller classes, release time for training, additional resource teachers, or other personnel who would be free to directly assist handicapped students.

Let's throw out one last money matter for you to consider. Even assuming that programs and training were adequately funded, we still have the problem—not addressed by the law—of architectural barriers. At some point there will need to be some capital outlay for remodeling.

In closing, we offer a few observations about the oversight of the Education of All Handicapped Children Act. As P.L. 94-142 is put into effect, close monitoring will be needed. The NCES should be assigned to compile appropriate statistics on numbers of students served and unserved, types of handicaps serviced, costs of services and programs (including facilities, personnel, and so forth), and other aspects of fulfilling the law. NIE should be charged with carrying out appropriate research regarding methodology and techniques, and, even more important, with disseminating useful, understandable data on effective methods of teaching the handicapped. Such activities are appropriate for NIE and were the reason for which NIE was established. But NIE, in its brief history, has typically not produced the kind of meaning-

ful results that directly assist the teacher in the classroom. We believe that education of the handicapped is an area which needs much such research and dissemination, and that NIE should direct its attention to this field.

The NEA cannot emphasize strongly enough that it's the teachers who will or will not fulfill the promise of this law. The officials in the Office of Education will not teach the children. The chief state school officers and the district administrators aren't going to teach the children. At the bottom of the bureaucratic pyramid are the teachers who must achieve your declared purpose. We as teachers accept the responsibility to do the best we can. With proper help and support, we will rejoice in the challenge. But as it is going, it looks as though we will once again get the responsibility but little help, little support, too little money, and no authority. Most seriously, we will likely reap the criticism which results from the inadequate results which follow.

Nonetheless, the NEA wants to assure the Congress that we share its commitment to the aims of the Education of All Handicapped Children Act. Even more, we want success. But we see many problems which, if not alleviated, will make success improbable. Chief of these problems is money. I submit that if we want the job done right, we have to do one of two things: accelerate the spending, or decelerate the doing. We prefer the former. If we proceed at currently authorized levels for currently authorized activities, we fear the noble effort will die of malnutrition.

Statement of the National Society for Autistic Children

(By Mary S. Akerley)

INSAC STATEMENT ON THE EDUCATION OF ALL HANDICAPPED CHILDREN ACT

The National Society for Autistic Children is an organization of parents, professionals and interested citizens dedicated to the welfare of children and adults with severe disorders of communication and behavior. The Society has over 100 chapters throughout the United States and liaison with its counterparts throughout the world. Since the Society's founding in 1965, its priorities have been research and education. NSAC vigorously supported P.L. 94-142 during its long passage from conceptualization to law and participated actively in the regulation process. We are pleased with the results and anxious that this new, landmark legislation be given a reasonable evaluation before any modifications are introduced. Certainly, until full implementation has been operational for at least a year (i.e., September 1, 1981), no rational assessment is possible and, hence, no amendments should be considered, much less effected.

On the surface, then, it would appear that Oversight Hearings so soon are premature. However, the Society is aware of the amendments suggested by the National Conference of State Legislatures, et al., and has studied their proposals carefully. In general, the amendments appear to have as their chief thrust relief to the states rather than the educational rights of handicapped children, a not surprising emphasis in view of the proposers. Our response is equally predictable: NSAC is opposed to any amendments which would in any way weaken the strong, unambiguous mandate of P.L. 94-142. Our children have waited too long for their rights to have them snatched away before they are fully realized.

We do, however, acknowledge the importance of the federal-state partnership called for in the law, and respectfully remind the Subcommittee that the need for such a partnership was a chief motivating factor in drafting and legislation. Without adequate funding, P.L. 94-142 will be more promise than performance. And, whether or not any of the proposed amendments are introduced and enacted, if Congress does not meet its commitments under the law, the states will have a very strong—and not altogether unreasonable—argument for not meeting their obligations. However, we question the enforceability of the contractual arrangement recommended by the states, however attractive the idea may appear.

The foregoing comments do not mean that NSAC endorses any modifications in the present funding formula. The states' argument for an initial funding level of $3.2 billion is without foundation as it is based on the average annual per pupil expenditure (which is basically a state responsibility) and not on the excess cost of special education, which is the portion to be federally funded. Nor is the current phase-in of funding inappropriate but rather consistent with the phase-in of services to eligible children according to age.

Nevertheless, some of the states' points concerning child-count requirements are well-taken. For example, a service-based count might very well yield data more relevant to the actual cost of services (e.g. multiply handicapped children do cost more to educate than do hard-of-hearing children). And a single annual count is

more likely to generate appropriate funding than is an average of two yearly counts, especially as the number of children served can reasonably be expected to increase constantly over time. (We do wish to correct an inaccuracy in the states' arguments: the count is based on the number of children enrolled on the given dates, so allowance is made for services which may not be delivered on a daily basis.) But we do wish to emphasize again that no change should be made until the law and regulations as presently written have had a reasonable test.

We fail to see how the states' solutions to the "problem" of the SEA's responsibility for "general supervision" change the existing situation in any positive way, nor do we see why it needs changing. Admittedly, transagency services are difficult to administer, but how can "common standards" among agencies be mandated (who would set—and enforce—them)? Who would have the power to coordinate providers of special education and related services other than the SEA, which already has that duty under P.L. 94-142? And, finally, would not the creation or designation of "an agency of last resort" require the very legislative or constitutional changes which the states are presently declaring the cause of P.L. 94-142's "unworkability"? Nor do we see how the states' suggested method of allocation of monies among the LEAs differs from the formula already in the law; the proposal simply transfers the "error" (if indeed there is one) to a different level.

The states' concern for the welfare of native American children with handicaps is laudable; we are sure that the states are pleased that the problem has already been addressed by the recently passed Department of the Interior Appropriations bill and the accompanying Committee Report.

Any changes in either the due process provisions or the individual education plan requirements are intolerable; those provisions are the real heart of the law and are already being used effectively to the benefit of many children. The states' fears concerning Individual Education Plans should have been allayed by the August 23 final regulations, which stipulate that IEPs cannot be used as evaluation tools (i.e., of the teacher or other provider). The IEP is, however, a contract for services—a contract mutually arrived at by provider and consumer, and those services *must* be available to the child who needs them. Of course there can be no guarantee that he will benefit from them to the hoped-for degree (that was never implied), but he must be given the opportunity to benefit as much as he can.

The states' references to requirements in P.L. 94-142 which "exceed" the requirements of Section 504 of the Rehabilitation Act are somewhat confusing. If anything, Section 504 places heavier demands on the states, particularly relative to full-service deadlines and payment for residential services. Moreover, those who would weaken P.L. 94-142 need to be reminded that, whether or not their will prevails, and whether or not the Congress appropriates funds at full authorization levels, the states are still bound by Section 504. And lack of resources is no defense against sanctions for non-compliance: the Waddy decision (*Mills* vs. *D.C.*) settled that issue by requiring equitable distribution of whatever money is available.

We appreciate the Subcommittee's concern for the rights of handicapped children as evidenced by these hearings. We urge the members to be equally conscientious in using their oversight functions to monitor implementation by the states and to insure the use of sanctions by the Secretary against those states which do not comply. Only then will this law work as you intended.

In closing, we wish to thank the Chairman and members of the Subcommittee for this opportunity to present our comments.

ALEXANDER GRAHAM BELL ASSOCIATION FOR THE DEAF, INC.,
Washington, D.C. October 8, 1977.

Representative JOHN BRADEMAS,
1236 Longworth House Office Building,
Washington, D.C.

DEAR MR. BRADEMAS: This represents the opportunity of the Alexander Graham Bell Association for the Deaf, Inc. to present views we were unable to give in oral testimony on September 26 and 27, to the Subcommittee on Select Education.

One of the most critical aspects of the implementation of Public Law 94-142 as far as deaf and hard of hearing children are concerned is the definition of "appropriate" education for youngsters with hearing losses. For the parent who seeks for his or her child an educational medium which does not include the language of signs and finger spelling, it is becoming increasingly difficult because of a common supposition by school administrators, child study teams, teachers and the general public that the approach called "total communication" is indeed the equivalent of

"oral education." This is in fact untrue since most such programs give speech work only an hour or two of such work a day or even a week. To give to deaf children the tools to communicate with the world about them calls for programs in which oral communication is a "way of life." Research and demonstration have not yet been undertaken to identify the differences between the two systems, not only in terms of their theory and philosophy, but in terms of the actual result.

There is available in the files of the Office of Demographic Studies at Gallaudet College considerable evidence of the differing achievement levels of hearing impaired children. Such information is gathered from schools and classes throughout the United States and made available to the general public only in broad general terms and without specifices as to the methodologies followed. It would seem appropriate that the Office of Demographic Studies be charged with the responsibility of publishing as concise reports as are possible dealing with the communication methods and that such information should be made available as a step in the direction of determining the appropriateness of educational programming for hearing impaired children. It is unconscionable on the part of Gallaudet College to have such information collected and analyzed at public expense and not make it available to educators, parents and the very public which has paid for such data gathering and analysis. With respect to the implementation of Public Law 94-142, it is evident that one of the important reasons or excuses given for endeavoring to combine as many hearing impaired children in one classroom as possible often adopting simultaneous methods of communication as the mode of communication for all children has been economics. While Congress passed Public Law 94-142, the funding for this law has not by any means been made at the levels anticipated for full implementation. As a result, public school systems are endeavoring to meet and fulfill the intent of the law with resources that are less than anticipated and considerably less than could be reasonably expected to permit proper implementation of the law.

For these reasons, it is understandable that local education agencies are endeavoring to meet the requirements of the law at minimum expense and thus trying to combine faculties, transportation facilities, school classroom allocations in such a way that all children with hearing impairments are grouped together. This, however, is in outright opposition to the determinations by many outstanding educators to the effect that simultaneous communication does not lead to adequate oral communication and speech skills. Thus deaf youngsters and adults are not being given the tools needed to effectively interact with the speaking world about them.

These actions stem from the fact that many local education officials are not receiving the orientation required to effectively administer the law. Furthermore the limited financial resources tempt them to veer away from individualized educational programming. The result of this is that numerous hearing impaired children are receiving an inappropriate education throughout the nation.

With respect to the terminology "least restrictive environment" as it appears in PL 94-142 this must be viewed in the context of other terminology, e.g., "individualized educational placement." Whereas some hearing impaired children may be effectively placed in an environment with other disabled or non-disabled children, others may find that a residential situation is "least restrictive." It is quite clear, however, that the intent of PL 94-142 is to see that every youngster possible is educated within his local education agency with such special helps as are required to make this an appropriate educational placement. The Alexander Graham Bell Association for the Deaf endorses this approach and is anxious to do everything in its power to implement it. Alexander Graham Bell himself, almost one hundred years ago, was testifying before state legislatures, professional organizations and in discussions with parents of deaf children, urging that youngsters be educated to the maximum extent possible through speech communication proficiency in the company of non-disabled children. It would be a great sense of gratification to Dr. Bell, were he alive today, to realize that under Public Law 94-142 the Congress has mandated the very type of educational setting which he was advocating almost as a "Prophet crying out in the wilderness" in the latter part of the 19th century.

On Wednesday, October 5, the Model Secondary School for the Deaf was dedicated on the campus of Gallaudet College, funded by Congress. It would appear that Congress has introduced a strange paradox in that on the one hand it develops through PL 94-142 the concept of hearing impaired children being educated in their local school districts, while on the other hand it appropriates substantial sums of money to programs which tend to remove them from their local school districts. Furthermore the Congress is supporting in Gallaudet College a communication mode which tends to isolate hearing impaired youngsters from the most prevalent educational milieu visualized by PL 94-142.

We applaud the members of this committee, the Congress and the Executive Branch in their efforts to provide through PL 94-142 the concepts of individualized

educational programs and the least restrictive environments in order that every hearing impaired child may receive the most appropriate educational placement possible. I thank you for the opportunity to make the above statements for inclusion in the record of your Subcommittee on Select Education, and would welcome the opportunity to personally amplify my views to you in greater detail.

Sincerely yours,

H. LATHAM BREUNIG, Ph. D.,
President.

an early years portfolio on **P.L.94-142**

Think of the new national program for educating the handicapped, not as an awesome burden soon to be thrust upon you but, rather, as an opportunity to become an even better teacher than you are. Think of it, not so much as another monkey wrench hurled into your grand schemes to individualize instruction but, rather, as a good reason to test, temper and improve upon those plans. And think of it, not so much as more children to accommodate in an already overcrowded classroom but, rather, as a means by which, as the sensitive illustration by Martha Perske on this page suggests, a lot of beautiful kids will find their way out of the forest and into the bright sunshine. Think that way, and you've got the idea behind this special EARLY YEARS portfolio on P. L. 94-142.

what you need to know about P.L.94-142

By Frederick Weintraub

Public Law 94-142, The Education for All Handicapped Children Act of 1975, has tremendous implications for educators, particularly those who work with children in the early years of school. The following questions and answers—they were prepared by The Council for Exceptional Children—are aimed at helping you understand the law.

What are the primary purposes of the act?
First, to guarantee that all handicapped children have available to them a free and appropriate public education. Second, to guarantee that certain rights of handicapped children and their families are protected in the educational decision-making process. Third, to establish a clear management process regarding education of the handicapped at all levels of government. Fourth, to provide financial assistance to state and local governments for education of the handicapped.

When must the requirements of the law be carried out?
All rights protections must be in place by October 1, 1977, if a school district wishes to count a child for federal reimbursement purposes. By September 1, 1978, all handicapped children aged 3 to 18 must have available free appropriate public education and all other guaranteed rights. This requirement must be extended to handicapped children 18 to 21 by September 1, 1980.

Are there any waivers?
Yes—when the federal mandate is inconsistent with state law, policy or practice.

Is there special encouragement to serve preschool handicapped children?
Yes—there is a special incentive grant. Each handicapped three- through five-year-old who is counted as served will generate a special $300 entitlement. This entitlement goes to the state education agency and must be used by it to provide further preschool services. Additionally, this entitlement requires a separate "line item" appropriation, independent of the larger appropriation.

How are handicapped children defined for purposes of P.L. 94-142?
Qualifying as handicapped under the law are the mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, seriously emotionally disturbed, orthopedically or other health impaired, or children with specific learning disabilities who require special services.

How are the "special education" and "related services" that P.L. 94-142 attempts to guarantee defined?
The term "special education" means specially designed instruction, at no cost to parents or guardians, to meet the unique needs of a handicapped child, including classroom instruction, instruction in physical education, home instruction and instruction in hospitals and institutions. The term "related services" means transportation and such developmental, corrective and other supportive services (including speech pathology and audiology, psychological services, physical and occupational therapy, recreation and medical and counseling services, except that such medical services shall be for diagnostic and evaluation purposes only) as may be required to assist a handicapped child to benefit from special education. The term also includes the early identification and assessment of handicapping conditions in children.

What are the major child and program requirements under this act?
P.L. 94-142 makes a number of critical stipulations which must be adhered to by *both* the state and its localities. Among them:
—assurance of extensive child identification procedures;
—assurance of "full service" goal and detailed timetable;

—a guarantee of complete due process procedures;
—the assurance of regular parent or guardian consultation;
—programs of in-service training;
—assurance of special education in the *least restrictive* environment for each handicapped child;
—assurance of nondiscriminatory testing and evaluation;
—a guarantee of policies and procedures to protect the confidentiality of data and information;
—maintenance of an individualized education program for each handicapped child;
—assurance of an effective policy guaranteeing the right of all handicapped children to a free, appropriate public education, *at no cost* to parents or guardian;
—assurance of a surrogate to act for a child when necessary.

Does the "least restrictive environment" mean regular classrooms?

Only when such an environment is appropriate to meeting the child's educational needs. The law requires that handicapped children be educated with non-handicapped children and that special classes, separate schooling or other removal from the regular educational environment occurs only when the nature or severity of the handicap is such that education in regular classes cannot be achieved satisfactorily, even with supplementary aids and services.

How can we assure that children are properly placed and that required services are provided?

The written individualized education program (IEP) requirement can be helpful. This document, developed and agreed upon by the child's teacher, parent and an administration representative, sets forth the child's educational problem, a time schedule and evaluative criteria. It is to be reviewed and revised, at least annually. A child must have an agreed upon IEP before placement.

How does a local education agency participate under this act?

P.L. 94-142 contains a substantial pass-through to the local school districts. In the first year of the new formula, 50 percent of the monies going to a state would be allocated to the state education agency and 50 percent to the local education agencies. In the following year, fiscal 1979, the local entitlement enlarges to 75 percent of the total state allocation. The 75-25 arrangement then becomes the permanent distribution arrangement. The current state control of all funds is retained for the remainder of fiscal year 1976 and fiscal year 1977.

Are private facilities eligible to receive funds under this act?

Children in private schools may receive assistance if:
—such children are placed in, or referred to, such schools by the state or local education agency *as a means of carrying out public policy;*
—an individualized education program, as required by the act, is maintained for such children;
—special education is at no cost to the parents;
—the state education agency determines that participating schools meet the standards that apply to state and local education agencies;
—the children served in such facilities are accorded all of the educational rights they would have if served directly by the public agencies;

How much federal aid can be expected under this act?

That is difficult to predict because the formula is based on a child count and cost of education factor, and because funds must be appropriated annually. If fully funded, the federal aid for each fiscal year has been estimated at: 1978, $387 million (on the 5 percent factor); 1979, $775 million (on the 10 percent factor); 1980, $1.2 billion (on the 20 percent factor); 1981, $2.32 billion (on the 30 percent factor); 1982, $3.16 billion (on the 40 percent factor).

Where can we get more information?

The Council for Exceptional Children provides several resources designed to assist educators in understanding and implementing various facets of *P.L. 94-142: (1) A media package, P.L. 94-142 The Education for All Handicapped Children Act,* answers the needs of parents, administrators and teachers. (2) A three-part film-cassette format (available at $50) presents *Introducing P.L. 94-142, Complying with P.L. 94-142,* and *How P.L. 94-142 Works for Children.* (3) Two helpful books recently published by the Council are *Public Policy and the Education of Exceptional Children,* edited by Frederick Weintraub, *et al.* ($13.95), and *A Primer on Due Process,* Alan Abeson *et al.* ($4.95). Inquiries regarding these and other resources may be directed to The Council for Exceptional Children, 1920 Association Drive, Reston, Va. 22091. ↓

guess who's coming to class

By Linda Bowman

Scott, EY's cover boy, is a five-year old cerebral palsy victim who has been fully and happily integrated into a regular kindergarten. There are a lot more children waiting for the same chance—"beautiful, capable children who need your classroom to complete their education." That's the hope and the promise of P.L. 94-142

Mainstreaming! If you're like a lot of teachers, the word is enough to make you head for the top rung of the jungle gym. With P.L. 94-142 casting a shadow on the threshold of the classroom, that rung could get pretty crowded.

But wait. Set aside your doubts for a moment and share with me a look at what a handicapped child gets from, and gives to the regular classroom. Believe me, it's enough to bring you back down to earth.

Not too long ago, for example, I delivered a lecture on Osteogenesis Imperfecta (fragile bones) to a first-grade class. Actually, my subject was Jennifer, a five-year old, 13-pound wonder whose fragility requires that she travel her small world in a wheelchair. The first-graders were a rapt audience. And they asked beautiful questions: "Can she talk?" "Will she die?" "Will I hurt her if I play with her?"

Mrs. Bowman teaches orthopedically-handicapped children at the Donald G. Glankler School in Fremont, Cal.

Perhaps you've guessed. This was a pre-integration rap session. Eventually, through integration—mainstreaming, if you will—Jennifer and that class became one. The other children acquired a beautiful, gossamer person to love, and learn from; Jennifer acquired a rare chance to broaden her world.

That is the hope and the promise of P.L.94-142. With it, comes the opportunity to give the gift of Jennifer over and over again.

Enter: the Team. There is no manual for perfect integration. In California, where, for some time, we've had a good state program for educating special kids, we're writing ours as we go. It begins with a definition of the handicapped (the code defines the physically handicapped child as any minor who, by reason of physical impairment, can't get full benefit from ordinary educational facilities). And, already, there are many chapters telling of the happy union of handicapped child and regular classroom.

The new federal law, the one you're concerned with, calls for handicapped kids to be placed in the "least restrictive program"—meaning mainstreaming, whenever possible. Maybe, then, you'll have a special child or two in your classroom. If so, what can you expect?

Since I teach orthopedically-handicapped kids, I may be able to give you some clues. It is not, however, with warnings and watch-out-fors that I come to you but, rather, with a pocketful of hope and assurance.

In the first place, when a youngster is mainstreamed, you don't just get a handicapped child. You get a team. Backing up the child is a crew that, in the case of an orthopedic handicap, is likely to include physicians (neurologists, pediatricians, orthopedists); thera-

Shown taking a moment's rest from the recreation during a school field trip to San Francisco's Golden Gate Park, five-year old Scott, who graces the page opposite and this month's cover, spent a year in Linda Bowman's O.H. class at Glenkler School, but is now doing beautifully in regular kindergarten. Toria, age four, who suffers a general muscular weakness, and Dustin, five, a cerebral palsy victim (shown at right) are now being readied for regular school in Linda's O.H. class. Sooner or later, they'll need a classroom like yours as an arena in which to test their new—and hard-won—independence.

Rachel, left, a six-year-old gun-shot victim, enjoys a moment with a feathered friend. The most seriously impaired of Linda's kids, she was progressing very well in her studies until recently, when a setback required that she go into the hospital again.

pists (occupational, physical and/or speech); a psychologist, a public health nurse; and, possibly, an adaptive physical education instructor. Such professionals keep ongoing records that are invaluable to the classroom teacher.

At our school, the therapy department has become expert at assessing and remediating learning disabilities. When one of our kids moves to a regular classroom, the department works hand-in-hand with the new teacher to help insure the child's—and the teacher's—success. And that's only the beginning.

Take the case of Dawna. When she was ready to move from my class into a regular school, we didn't just write her off the roster. In advance of her placement, I visited her prospective school as part of a team that included her occupational therapist, physical therapist and mother. We discussed with the new teacher Dawna's academic and physical capabilities and we listened to, and were able to ease many of her concerns.

While we were at the school, the therapists toured the playground and the building—classrooms, hallways, bathrooms, everything. Why the probing and peeking? To see what would be needed to make the environment suitable for Dawna. Under the California code, Dawna is allowed $1,018 per year for such needs and, to this day, her school gets that amount to provide playground equipment, ramps, tutors or whatever else will help insure Dawna's continued success. In the same way, P.L. 94-142 will bring new facilities to your school.

Target: Independence. Secondly, you can almost count on the fact that the child you get will have been under the guidance of professionals who have been striving for just that eventuality: making him ready for a regular classroom.

At our school, we attempt to match the program with that of neighborhood schools, so that any transitions will be smooth. We want our kids to be academically ready for classrooms like yours. And we want them to be independent—we work very hard with them on physical mobility, self-help, communications skills and self-esteem.

Also working for the child's independence is the parent—a valuable resource for you, indeed. Almost always, the parents of a handicapped child are well informed. They know their child and his disability—lessons learned through endless rounds of consultation with specialists, a lot of reading and, more likely than not, active participation in such organizations as United Cerebral Palsy, the Muscular Distrophy Association, Crippled Children's Services. Even more important, perhaps, they have intimate knowledge of what it takes to keep their child happy and comfortable—how to lift, carry or propel him, for example. They're anxious to make integration a successful venture and they'll help in more ways than you can imagine.

How sad it is, when a child who is ready and eager to try out his skills in the real world can't find a way out of the necessarily insular environment of the special classroom. P.L. 94-142 is the window on the world, oh, so many newly independent kids have been searching for.

Coming: a Pipeline. As I said, the prime objective in our school is to make our children independent. Obviously, then, the measure of our success is how well our graduates function in classrooms like yours. As a result, I view my responsibilities as twofold: (1) I must prepare the child. (2) I must work with the regular classroom teacher so she feels comfortable, well informed, supported. To meet the latter objective requires that pipelines of communication be established and kept open. And that's the way it is under P.L. 94-142.

Certainly, there are many questions you'll want answered about mainstreaming in general and any kids who are mainstreamed into your class in particular. Why should you take one of my 12 pupils when you've already got 30 of your own? What will you do if the child gets hurt on the playground? Will your classroom be in for any of

the funding that special education gets? What can you do if your other kids tease the newcomer? Valid questions. And the professionals who help you plan the integration will be prepared with valid answers.

Your school system may even do what we do. Stage seminars to let the new teacher—and her other kids—know what to expect when a special child joins their group. To make things even easier, we are developing a form based on the most frequently asked questions, which both the special teacher and the integrating one are to fill out.

Still, the best tool is person-to-person communication. Which brings me to Mike, a wonderful someone we person-to-person with. He's with a school very much like yours, and he often functions as the facilitator of mainstreaming between our building and his. He visits almost daily to share problems and successes. To us, he's a hero. He gives our kids the chance to learn what we can't teach them.

What do we give Mike and his school in return? For one thing, a rich learning experience. And P.L. 94-142 is making that treasure available to your children, too.

There is no way that a teacher with a special child in her classroom can avoid becoming more knowledgeable in at least those disability areas that affect her new pupil. Such knowledge—it adds up to a lot more than the ability to drop words like *apraxia*, *dyslexia* and *athetosis*—is bound to carry over into other areas of professional life.

Children who share a classroom with an exceptional child can't help but learn something special, too. A depth of sensitivity and understanding is sure to develop. Especially at the K-3 levels, the beauty of integrating is the inherent honesty and lack of prejudice a teacher has to work with.

A Possibility: Reverse Gear. So far, we have been discussing mostly how the communication pipeline created by P.L. 94-142 will promote initial mainstreaming. Other possibilities: skill exchanges and reverse integration.

My school, for example, is into perceptual assessment and remediation and, often, a regular classroom teacher will come to us with a child she'd like evaluated. Also, we bring regular students into our sensory program—a case of reverse integration, so to speak. We have housed regular math classes, too. And we serve as a training ground for cross-age tutors.

If all of the above has served to convince you that P.L. 94-142 can make you a more knowledgeable teacher than you are, that's as it should be. If it has suggested to you that having a special classmate can help your other students become more responsible and sensitive individuals, so much the better. But, from my point of view, even more important is what you and your kids have to offer the handicapped child.

The special child cannot learn the real meaning of competition, independence and survival in the sheltered ambience of a special school. There are some very beautiful, capable children who need your classroom to complete their education. And isn't it wonderful that you have it to give? ✦

By Peggy Glazzard

putting out the welcome mat

You, your other children and the exceptional children who join them are all going to have to make adjustments when P.L. 94-142 takes effect. In this article, some suggestions aimed at helping you all, and showing you how the new law can make you an even better teacher than you are

P.L. 94-142 has been called the Bill of Rights for the Handicapped. To a classroom teacher, that may sound an ominous declaration, indeed.

What does the new law really mean to you? How can you cope with handicapped children in a classroom already filled with 25 or 30 little individuals, each with special needs, special abilities, special problems?

For one thing, you can take heart in the fact that you'll have lots of expert help in providing education for the special children placed in your classroom. Special education people will be involved in (1) assessment; (2) planning; (3) provision of special materials; (4) educational consultation for alternate teaching methods; and (5) actual instruction whenever it's appropriate.

Such service will, of course, require that you spend extra time in meetings with those specialists concerned with the exceptional children assigned to your classroom. That time is sure to pay big dividends for the handicapped kids. And just think how this sharing of ideas, materials and methods can help you, too, in your work with children who, though not classified as "handicapped," are having learning problems. Besides, P.L. 94-142 also calls for more inservice training and that means new ideas and techniques—the kind that can help everybody—will be pipe-lined into your classroom. Perhaps the best way to look at the new law, then, is as an opportunity to become an even better teacher than you are.

Meanwhile, here, some ideas to think about.

There's no insurance that a mainstreamed child will automatically be accepted by, or feel comfortable with your group. It's a good idea, then, to spend a little time preparing the other children for the new arrivals.

For starters, you might, for example, get any handicapped youngsters who will be joining your group to prepare little scrapbooks about themselves (photos, drawings, a sentence or two about their pets, favorite things, whatever) in advance of their arrival. Keep the books on the library table, where the other children can get at them to find out for themselves what nice people their prospective classmates are.

You'll also want to discuss the children's handicaps with your other pupils. If a child's handicap will require special treatment from you or the children, or changes in the physical setup of the classroom, these needs should be aired openly. At the same time, make sure the kids know that you want them to help the new children to become as independent as possible, yes, you want them to be kind and helpful, but not so helpful that the special child comes to depend on them for things he can do, or can learn to do, by himself. Throughout such discussions, be careful to emphasize similarities, rather than differences, between handicapped and other children.

Just before the arrival of the handicapped kids, have the other children write welcoming notes. Encourage them to illustrate their letters and to add a word or two about themselves.

Prepare the special child for life in your classroom. No doubt, both he and his parents will have many fears about the new situation. The child may have insecurities based on overprotection (for example, if he's had extensive hospital care) and, certainly, no parents want to expose their child to ridicule of any kind.

One way to assure both the child and his parents that your classroom will be a happy place is to invite them in to meet you at a time when there are no other children around. (That way, the child doesn't have to make two adjustments—(1) to the new situation and (2) to new classmates—at the same time.) Discuss daily procedures and show off materials and equipment, so both parents and child will get an idea of classroom routines.

It'll be a big help to the child, too, if you draw a map of the school for him. Then, while he's visiting, you can take him on a tour of the building, using the map as a guide.

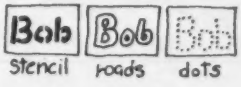
Assign several pupils the responsibility of helping each new child during his first few days. Some exceptional children don't need physical help, of course; but, like newcomers everywhere, all will need help in get-

Dr. Glazzard has been a regular classroom teacher, a remedial teacher and a learning disabilities consultant. At present, she is an assistant professor of special education at the University of Kansas and special education coordinator of the Children's Rehabilitation Unit/University Affiliated Services at the Kansas University Medical Center in Kansas City.

ting to feel like they are part of the group. In any case, promoting the feeling of responsibility among your regular pupils is probably a good thing. Again, warn the children against being overly helpful. Carrying a lunch tray for a child on crutches is a very different matter from fetching and carrying so much that the handicapped child ceases to reach out for himself.

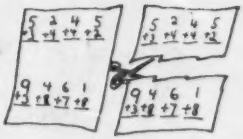
4 Design your educational program to fit the special child's needs. And don't be concerned if his present level of functioning doesn't meet the norms of the class. If, for example, the new child can't put on his own coat, make teaching him to do it one of your objectives. If he can't write his name (and your other kids can), make teaching him to do it a goal.

You say you've never had to teach a child to write his name before? Well, then, a few moments conversation with teachers who do



it all the time should yield a host of ideas, like, for example: (1) Taping a model of the child's name to his desk so it's always in sight. (2) Having him write it in air, on the chalkboard and/or in sand. (3) Letting him "feel" his name, by preparing a "sandpaper" version of it (write the name in white glue; sprinkle on sand, salt or sugar; allow the glue to dry; shake off the excess sandy stuff). (4) Using stencil, wide "roads" or dots as seatwork projects (see illustration).

5 Adapt your materials when the need arises. For example, an entire page of math problems may so overwhelm a child that he loses interest, and then, either writes down any answer just to get it over with, or refuses to do the work. All you need to do to solve the problem is cut the workbook page or dittoed worksheet into strips. When the child completes a strip, he turns it in, and you give him the next strip to do. (Same technique applies to

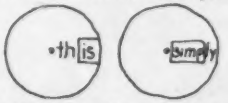


any other lesson that seems too big a dose for a child.)

If your special child has motor problems that make writing difficult, substitute multiple-choice or fill-in-the-blank exercises for those that require writing long paragraphs. Or, give him exercises and tests orally. Or, dictate them on tape, leaving gaps, so he can record his answers on the same tape (a good testing technique for poor readers, because it doesn't penalize them in other subject areas).

You'd be surprised at how many kids are needlessly referred to clinics because they seem to write backwards ("mirror writing"), when the problem is just a matter of not knowing where to start on a page. If that's the case, the problem can be overcome, just by making it a practice to mark the starting point on a child's papers with a small green dot.

6 Feel free to develop your own classroom materials. You don't always have to rely on manufactured programs. And, certainly, the excuse that "our materials haven't arrived yet"



is no excuse at all for delaying an educational program. Without too much trouble, you can construct your own word cards and games or tachiscopes for individual skill reinforcement, or whatever.

A digraph wheel is one example. First, help the child compose a list of, let's say, "th" words. Then, he (or you) puts the wheel together this way: Cut two tagboard circles (about 5-inch diameter), making a 1¾-inch window in one of them. Place the window wheel atop the other and fasten them together with a brad fastener. Write "th" in red on the top wheel, and then,

spin the wheel, each time filling in the exposed window area with the ending of a word on the list (use black pen). The same kind of wheel can, of course, be adapted for use in teaching beginning and ending consonants; two- or three-letter blends; suffixes and prefixes. Best of all, it's the kind of tool a child can use with ease at home or school.

Self-correcting materials promote independence, so use them whenever possible. One example: a set of picture/word cards, each of which features, on one side, a picture of an object along with the word that names it and, on the other, the name-word alone. The cards are placed before the child picture-side down; he selects one, tries to read the word on it; then turns it over to see if the picture-clue supports his response.

Many handicapped children are likely to enter the primaries without knowing how to use scissors. If your other kids are expert cutter-uppers, working with a child who can't cut may seem a big problem. Don't despair, help is there. All you need to do is break the operation down into small sequential steps that insure success every inch of the way. First, make sure you have appropriate scissors available—righthand ones, lefthand ones and maybe even training scissors (the child feels the motion, while teacher does the "cutting" with her fingers). Then: (1) Start the child on making snips across a strip of paper (or let him snip clay, which cuts easily and doesn't have to be held in place). (2) Give him wider pieces of paper that will require consecutive snips. (3) Have him cut snips in a strip that don't sever the paper (with control, he gets fringe; without it, confetti). (4) Have him cut heavy black roads (narrow strips), and then challenge him to cut along a single line. (5) Introduce curves, circles and angles. With enough practice at each step along the way, the child's cutting ability should develop nicely.

It's possible, too, that your special child will be behind your other pupils in spelling. One way to help him (and any other kids who may be having trouble) is the Fernald or VAKT (visual-auditory-kinesthetic-tactile) way. Basically, this is a multisensory, whole-word system that's taught in four stages. The important thing is that the child always writes a word without looking at a model (the rationale: looking back and forth from a supplied model to one's own writing creates the danger of breaking up the word into meaningless units). To give you an idea of what VAKT is like, let's take a look at Stage I:

- Teacher crayons the spelling word at the top of a large sheet of newsprint and then says the word as a whole.
- The child pronounces the word. Then, as he traces teacher's writing with his finger, he says each syllable. These steps are repeated until the child seems certain he can write the word from memory.
- Cover the word. Without looking at the model the child says and writes the word. Then he compares his effort with the original. If he makes an error, the whole procedure is repeated.

7 In adapting or designing instructional tools for the special child, never lose sight of his interest level. Even though a third-grader may need instruction in so basic a reading skill as sound-symbol relationships, the B for *baby, ball* and *bunny* samples borrowed from the first-grade teacher aren't going to grab and hold his attention. Better you should swap words like *baseball, bunt* and *barbecue* for the first-grade's *bunnies* and *babies*. Then, not only do you stand a better chance of captivating the older child but, also, of leaving his self-image untarnished.

8 Analyze the types of errors a child makes on his papers. Only that way can you be sure to teach him what he needs to learn. Let's say, for example, that a child turns in a math paper that includes:

33	41	58
−14	−29	−20
21	28	30

More important than the wrong answers is the fact that the child obviously doesn't understand what zero means and that he is sub-

Continued on page 65

98-811 O - 78 - 12

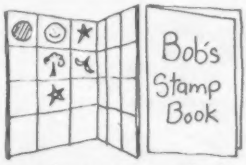
ELCOME
ontinued from page 43

tracting the smaller number from the larger, regardless of position. These are a clear signal that, instead of going on to the next workbook lesson, what the child needs is more work on basic math.

9 Be functional in your instruction. Copying complicated dot patterns won't necessarily teach a child to write. If writing is what you're teaching, provide practice with real letters. Letters, you know will generalize to other academic areas; patterns and designs, you can't be sure about. The moral: if there's something you know you should teach, teach it, don't look for subtle ways to get the message across.

10 Benchmarks of his own progress can't help but delight and inspire a youngster. Do provide reinforcement in the form of charts, graphs, or whatever to give your kids—especially special ones—a graphic display of their successes.

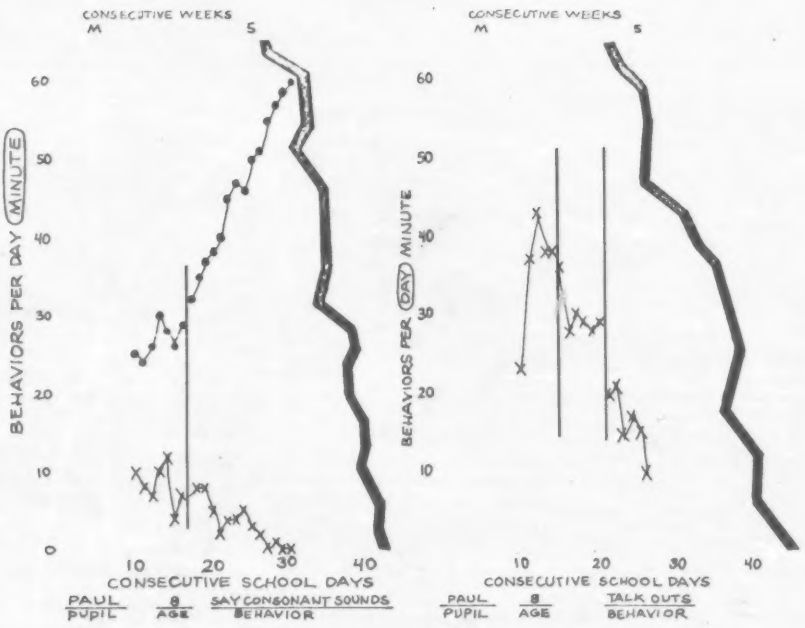
One quick success record is the stamp book. To make one: Fold a 9½ × 11-inch sheet of paper in half, label the outside with the child's name and line the inside with stamp-size boxes. As a child reaches a goal (e.g., 90 per cent



correct on a spelling paper), add a sticker to his stamp book. In this way, several stamps can be earned each day. (You'll defeat your purpose, if you demand too much of a child. That leads to frustration.)

Also valuable as motivators are rewards for finishing tasks. For example, you might make it a policy to allow kids who have finished daily assignments to participate in prized extra-curricular activities, to serve as kindergarten helpers, or to do messenger work for you.

11 If you need extra help, get it. I've often heard teachers moan that they just can't give their slow children the time they need and deserve. If that problem comes up in your classroom, make it your business to round up assistance. If your system can't afford paid aides, consider peer tutors, older students as tutors or do what you have to do to get PTA or senior-citizen volunteers (when transportation can be arranged, the oldsters are eager and valuable helpers). You will, of course, have to supervise the aides' work closely, but that's a small price to pay for the individual attention they'll give your pupils.



By Tom Lovitt

precision teaching

No getting around it. The Bill of Rights for the Handicapped will require that you keep records of each special child's progress. Here's an effective and efficient way to do it

One provision of The Education for All Handicapped Children Act is that a satisfactory record must be maintained charting the progress (or lack of it) of each handicapped child in a regular classroom.

Still another thing for teacher to worry about? You bet. Any way you can get out of it? Not a chance.

The author is with the Child Development and Mental Retardation Center, Experimental Education Unit, University of Washington, Seattle.

Record-keeping is what the law requires and record-keeping is what you're going to do. And since the flow of federal funds depends upon compliance with the law, you can be pretty sure that your school system will be more than a little interested in seeing that you *do* keep satisfactory records.

Ah, but don't worry. It won't be anywhere near as mind-bending as it sounds. In the first place, your classroom isn't going to be filled with handicapped kids just like that. No way you're going to be keeping records of dozens of kids.

And in the second place, no one expects you to keep complex clinical studies of a child's particular disability. What you *will* be expected to do, though, is maintain some kind of relatively simple running record which will show not only how the child is progressing but also how he is responding to the teaching strategies you devise.

In your search for methods to measure the academic and social abilities of children, you can select from a wide variety of scales, tests and checklists. You can administer intelligence tests, achievement tests, projective techniques, sociometric techniques, social rating scales or in-depth interviews. Forget it. Although you'll undoubtedly come up with some useful information from these techniques,

they're hardly worth the time and trouble. They're invariably complex to administer and difficult to interpret. In fact, many of these techniques require a teacher to take special courses, or even another degree, before they can be administered.

But much more condemning is the fact that these techniques offer an *indirect* and *infrequent* measure of what's being taught. By "indirect," I mean that the tests may not measure those behaviors which are of concern. And by "infrequent," I mean that the techniques are hardly designed to be used week in and week out and that's almost a necessity when you consider that the law calls for a "statement of the child's present levels of educational performance . . ."

Five Steps. A better method for monitoring the progress of handicapped children is available. This method, commonly referred to as Precision Teaching, is not complex and its techniques can be easily learned. The data derived from this approach are easy to interpret. Furthermore, the data relate *directly* to a child's program and are obtained *frequently*.

Precision teaching was developed by O.R. Lindsley in 1964 at the University of Kansas. Since that time, hundreds of regular and special education teachers across the country have used the method of measure and ultimately change many behaviors of children. Precision Teaching has also been used by other school personnel, parents and even by children.

In order to use this method, the teacher must perform five steps. She must pinpoint, count, chart, aim and evaluate.

Pinpoint. The teacher must pinpoint each behavior of a child's program. For example, if two goals of the child's IEP (the individualized education program, which, according to Public Law 94-142, must be written for each handicapped child) are to increase his ability to say consonant sounds and to decrease the times he talks out of turn, those behaviors would be defined. Thereafter, situations should be arranged to deal directly with those behaviors.

Count. Once the teacher has defined the behaviors, she must count the number of times they occur. As for saying consonant sounds, she might give the child a sheet on which were written several consonants. He would then be required to say the sounds of the letters for one minute, while the teacher counts the number of correct and incorrect sounds. As for the other behavior—talks out—the teacher counts each time, through the entire day, the child talks without first asking permission.

Chart. Before I explain how to chart, take a look at the charts shown on these pages. (For the sake of simplicity, each chart covers only several weeks; however, an actual chart might cover as many weeks as there are in the term.) The vertical lines separate the days of the week; each heavy line indicates a Monday. The numbers across the bottom correspond to consecutive school days and those across the top to consecutive weeks. The horizontal lines refer to the number of times a behavior occurred. (Again, the chart has been simplified; in actual practice, the numbers would go from 0 to 100.)

Each day, the teacher charts the number of times a behavior occurs. (On the sample chart, there were 23 talk outs the first day, 37 the second day and 43 the third day.) This frequent charting of behavior may seem somewhat of a bore, but it's the only way accurate readings can be obtained. Decisions about children's programs cannot be based on infrequent impressions.

Aim. Once the teacher has pinpointed those behaviors which comprise the IEP, she must establish aims. In other words, she must know the extent to which a behavior should change. According to the law, "A statement of short term instructional objectives, which must be measurable . . . will be established."

Although these aims can be derived in several ways, the performances of some non-handicapped children are often used as aims for handicapped children. The aim for the first behavior might be to say consonant sounds correctly at the rate of 60 per minute with only one error, while the aim for talk outs might be to talk out of turn less than 10 times a day.

Evaluate. Each time the teacher charts, she will be informed whether or not he is approaching his aim. Based on these daily chartings, she can decide to change the child's program or continue using the one currently in effect. (On the charts, change of instruction is indicated by a heavy vertical line.) This feature of Precision Teaching is also consistent with the law in that " . . . each handicapped child's individualized education program is revised periodically . . ."

Saying Sounds. The most difficult thing about charting a child's daily progress is preparing the charts—and even that's hardly a monumental task. Once the charts are prepared, the whole process is as simple as taking attendance each day. For example, take a look at the chart which records Paul's progress in mastering consonant sounds.

Each day Paul said sounds for one minute. During that time, the teacher counted the number of correct and incorrect sounds. (Note that on the chart the word "minute" is circled. This indicates that each session lasted only one minute.) On Monday, he said 25 correctly and 10 incorrectly; both counts are placed on the same Monday line. On the next day, his correct and incorrect responses were 24 and 8. For the next five days, his correct responses were 26, 30, 28, 26 and 29, while his incorrect responses were 7, 10, 12, 4 and 7.

During this seven-day period, the teacher asked a few of her average pupils to say sounds for one minute. Their correct rates were around 60 per minute, with only one error. These rates were used as the aims for Paul. Two *A*'s are placed at the left of the chart to indicate the aims.

After each day's session, the teacher evaluated Paul's performance. Although he improved

Continued on page 64

PRECISION TEACHING
Continued from page 45

somewhat, his progress was slow. She therefore changed the situation (indicated by the vertical line). During this second period, the teacher allowed Paul to chart his own rates. She also required him to practice one minute on each incorrectly said sound after each session. After a few days, his correct and incorrect rates reached the aims, and the teacher pinpointed another behavior for instruction.

Talk Outs. Throughout the entire day, the teacher made a tally on a pad of paper each time Paul talked out of turn. (Note that "day" is circled on the chart.) On Monday, he talked out 23 times. On the next four days, he talked out 36, 43, 38 and 38 times. During this period, the teacher counted the talk outs for two average pupils in her class. Since they spoke out of turn about 10 times a day, that number was used as Paul's aim.

After the fifth day, the teacher decided to do something different in an effort to reduce Paul's talk outs. She required him to do three math problems for each time he talked out. This was in addition to his regular assignment. During the next six days, he talked out 36, 28, 30, 29, 28 and 29 times.

The teacher decided to try another technique. During this third period, he was allowed 10 talk outs, but for each one above 10 he lost one minute of his afternoon recess. The teacher was finally successful; Paul's talk outs decreased to 10. Although he reached the aim, the teacher decided to continue talk outs once a week. That way, she'll know if he slips back into his old habits.

Only two behaviors are dealt with here, but obviously a child's IEP will include many other behaviors—for example, reading orally from certain books, copying all the letters in cursive form, refraining from fighting on the playground and so on. No matter. Precision Teaching is used with all of them.

Other Advantages. At least three other advantages, insofar as complying with Public Law 94-142, are apparent when Precision Teaching is used. They are:

Parent Communication. Parents can readily understand which behaviors of their children are being dealt with, what the aims are and how the children are progressing. There is no problem of parents being overwhelmed by sophisticated data, as is the case when standardized tests are used. The law states that "The parents of a handicapped child shall be afforded . . . an opportunity to examine all relevant records . . ."

Pupil Involvement. There are many instances of children counting their own behaviors, charting and evaluating them, and managing other aspects of their education when Precision Teaching is used. Certainly, children would never be allowed to administer, much less score, their own achievement tests. In this regard, the law says that the IEP's should be developed by " . . . the teacher, the parent and the child, where appropriate."

Nondiscriminatory Testing. When Precision Teaching is used, two measures can be used: single scores and a series of scores. Any single score—the correct rate on the first day of the consonant project, for example—provides a "performance" measure. A series of scores—the first seven correct rate scores for saying sounds—furnishes a "learning" measure.

Recently, some educators have demonstrated that "learning" measures (scores over a period of several days) are sensitive to the development of children, but rather insensitive to their racial backgrounds. In other words, "learning" measures are nondiscriminatory. This is an extremely important feature of the new law in that it " . . . requires states to establish non-discriminatory testing procedures for use in the evaluation and placement of handicapped children."

All of this emphasis on the requirements of the new law is well warranted. Like it or not, you will have to comply with the law and if Precision Teaching offers you an efficient and effective avenue of compliance—well, why not use it?

Don't think of mainstreaming as being one year away. It's here and now—and there are things you can start doing right away.

first things first

By William Johnson

Many classroom teachers, aware that recently passed federal legislation concerning special education is scheduled for full implementation in the very near future, have expressed to me their concerns, doubts and questions about mainstreaming. While some classroom teachers have little idea of just what their new responsibilities will be and want to know more, others have already formulated opinions based on hastily and—in far too many cases—thoughtlessly implemented mainstreaming programs.

For these reasons, I would like both to describe the mainstreaming procedures implied by the new federal law and suggest steps to insure their successful implementation. Let's first take a very brief look at the most recent history of mainstreaming, the concepts involved in mainstreaming, and how mainstreaming will affect you in the classroom.

Litigation and Legislation. In 1968, a noted special educator, Lloyd Dunn, published an article in the *Journal of Exceptional Children* which had a profound effect on the entire field of special education. In his article, Dunn pointed out that many of the accepted, traditional practices in special education might not be as sacred as people thought. Dunn questioned the need to segregate handicapped children in special classes and the need to apply labels to children in order to provide special services.

The impact of Dunn's article and those that have followed were felt far beyond the confines of special education. Parents of handicapped children, together with advocacy groups, picked up many of the arguments of Dunn (and others) and used them in litigation to force states to provide equal education to handicapped children. This litigation, which gained momentum in the late sixties, is being followed by legislation—by state governments and by the federal government in The Education for All Handicapped Children Act of 1975.

As a result of Dunn's article, the litigation and the legislation of the past few years, we are now at a point where most educators are committed to the notion of mainstreaming, which, as inferred in PL 94-142, means educating handicapped children in "the least restrictive environment." For many *mildly* handicapped children—including many of the learning disabled, the mentally retarded, the socially and emotionally maladjusted, the partially sighted and the partially deaf—this implies being at least partly educated within the regular class setting.

Dr. Johnson is a professor of special education at Fairfield (Conn.) University.

Four Categories. According to PL 94-142, handicapped children cannot be removed from or replaced in a regular class program unless recommended by a committee on the handicapped composed of various members of the professional staff and parents. Whatever the terminology employed by the committee, from the point of view of the elementary teacher, children are removed from their class because of problems that fall within four categories of classroom function.

Furthermore, handicapped children are returned to the regular program because of demonstrated improvement in one or more of these categories to the point where they are able to perform again within the limits accepted in the regular class program. The four categories are: behavioral management, instructional methods, instructional materials and curriculum.

But who goes where? To answer this question specifically, let's consider the reasons within each of these categories for removing special children from and returning them to the mainstream.

Behavior Management. The question of behavioral management comes up most often in reference to the highly aggressive child or the child who tends to create a great deal of disruption within the classroom. When such behavior gets to the point where it prevents other children from learning, then steps to change the situation must be taken.

First, the teacher must ask herself just what her limits are. Exactly which behaviors are acceptable and which are not? Once the teacher has answered this question, she can request the assistance of the special education teacher in bringing the child's behavior within the acceptable limits. Very often, the special ed teacher has a few techniques up her sleeve which will solve the problem without removing the child from the regular classroom, a step of last resort.

Instructional Methods. Sometimes a child is either so slow in a certain area, or so different generally, that the methods used by the teacher with the rest of the class do not seem applicable to a special child. Many teachers, for example, have three or four reading groups within a classroom. Within the lowest group, there may be considerable range of performance; even so, one child may fall so far below the others that participation is no longer feasible. At this point, the teacher must consider alternative methods. The special ed teacher can assist her in finding and implementing methods particularly suited to the child's learning pattern. (Instruction in reading may then be undertaken within a special setting or within the regular classroom, as the situation requires.)

Instructional Materials. Materials are the means for achieving educational goals. Some handicapped children require special materials to achieve these ends. Since such specialized materials may involve additional expense and special supervision, it's quite conceivable that a child might be removed from the mainstream because of a lack of necessary funds. However, thanks to PL 94-142, this is not a situation which classroom teachers will encounter frequently.

One of the purposes of the new federal law is to provide the additional money necessary for these materials, so that local educational budgets will not be overly pressed to meet the needs of the special child. Even if the materials are not available, the resource specialist can often find ways to adapt existing materials to the requirements of the child with special learning needs. The materials may be used in the resource room or in a regular classroom, and may be supervised by a special or a regular teacher.

Curriculum. Adjustment of curriculum, or educational goals, has the most far-reaching effect on children's educational programs. If, for instance, it is established that a child should undertake a functional reading curriculum involving modification of mainstream reading goals, then the child might well need to be educated outside the regular school program. The regular teacher would not usually be expected to accommodate such an adjustment in her class.

Positive Steps. Let's turn now to some of the positive steps that classroom teachers can take before mainstreaming is implemented in the schools. Some of these steps can be taken right away, some will have to wait until your school system has made its own first initiatives to implement mainstreaming, but they can all be taken before the first handicapped child is placed in a regular classroom.

These suggestions are also made to avoid the misguided efforts of school districts to return handicapped children to the mainstream prematurely, without due consideration for the consequences of such actions and without adequate support or preparation of the regular teacher and her class.

To begin with, teachers should request that their

Continued on page 82

FIRST THINGS FIRST *Continued from page 49*

school issue a policy statement regarding mainstreaming. It doesn't have to be a professionally written statement, but it should be fairly complete, including the extent to which mainstreaming is going to go, the types of children that will be placed in regular classrooms and under what conditions, some of the aims and goals, and some of the procedures that will be employed in mainstreaming handicapped children.

Needless to say, a policy statement isn't going to anticipate all of the problems that may arise, but it's a step in the right direction—and a step that should involve the concerted efforts of both the regular and special ed instructional and administrative staff.

Another step you can take personally is to think carefully about the range of variations you feel you can work with in the classroom. In considering behavior, ask yourself what problems have given you trouble in the past, how they were solved and what effect they had on your classroom practices. Once you find out the answers to these questions, you'll be well on your way to discovering what kind of behavior problems will reduce your teaching effectiveness. In considering instructional problems, ask: Which methods work effectively for you? Which ones don't? Are there any learning problems you really feel you can't cope with?

It's a good idea, by the way, to list these questions as a series of your strengths and weaknesses. This list may come in handy later on, when it's time to match up a handicapped child with just the "right" teacher.

Formal Communications. Whatever else happens when mainstreaming becomes a reality, you can count on one thing: You *will* be working closely with the special ed teachers in your school. This means that you should establish formal lines of communication between you and the specialists.

These lines, or procedures, should include such things as scheduled consultations, established reporting procedures and agreement on terminology used to describe problems and recommendations. By stressing the formal aspect of communications procedures, I don't mean that you should rule out informality—merely that you'll have to establish certain ground rules which will insure regular and meaningful consultations.

Just when you'll be able to sit down and talk to the special ed teachers depends, of course, on the particular situation in your school system. If the special ed teachers are on hand now, then you can open up a dialogue right away. However, if they're still to be hired, then obviously you'll just have to sit tight until they arrive.

This also applies to the handicapped children you may be teaching. There's nothing you can do until you find out who they are; but once you do find out, you can make a point of trying to establish a relationship with each child in his special ed setting. Working with a handicapped child in a learning center or resource room before he's placed in your classroom can accomplish a number of things:

First, it will enable you to become better acquainted with the child, to understand his problems a little more fully before he joins your class. Second, it will enable the child to become better acquainted with you—a tremendously important consideration when you take into account what a difficult transition he's going to have going from one setting to another. Third, you'll undoubtedly be able to pick up a few valuable pointers about the methods and procedures which are used with a child in a special ed setting.

Sensitization. Finally, one positive step you can take before a handicapped child is placed in your classroom is to acquaint your regular students—and their parents—with the characteristics

Continued on page 84

FIRST THINGS FIRST *Continued from page 82*

and needs of the handicapped. It's important that your handicapped children develop a positive image of themselves, and it's unlikely this is going to happen if they become the object of ridicule.

How do you get children (and their parents) to appreciate the needs of the handicapped? Well, there are a number of excellent films and books available which deal with the problem; and there's also the possibility of inviting older handicapped people to talk about their own problems and solutions.

As you can see, there are all sorts of positive steps you can take to insure the initial implementation of a mainstreaming program. Some of these steps are easy, while others involve considerable time and effort. But they're all tremendously important—both in terms of how you do your job and how your job is going to affect the handicapped children placed in your care.

Handicapped children have the right to participate in the fruits of our society and to be productive, along with their social and economic peers, in the mainstream of American life. They have to start somewhere, and it so happens that they're going to start with you. You may think that you're going to have problems, but really, it's the opportunity of a lifetime. Both theirs and yours.